TABLE OF CONTENTS

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.

In accordance with 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"),[1] Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Layford MAKENE
Self-represented

Versus

UNITED REPUBLIC OF TANZANIA
Represented by:

i. Mr. Gabriel P. MALATA, Solicitor General, Office of the Solicitor General
ii. Ms. Caroline K. CHIPETA, Head of Legal Unit, Ministry of Foreign Affairs and East African Cooperation
iii. Ms Alesia MBUYA, Assistant Director, Constitutional Affairs and Human Rights
iv. Ms. Nkasori SARAKIKYA, Assistant Director, Human Rights, Principal State Attorney, Attorney General's Chambers
v. Mr. Abubakar MRISHA, Senior State Attorney, Attorney General
vi. Ms. Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs, East Africa Cooperation

[1] Formerly Rule 8(2), Rules of Court, 2 June 2010.

After deliberation,

Renders the following Ruling:

I. THE PARTIES

1. Layford Makene (hereinafter referred to as "the Applicant") is a Tanzanians national who, at the time of filing the Application, was incarcerated at Uyui Central Prison, Tabora, having been convicted and sentenced to thirty (30) years' imprisonment for the offence of rape. He alleges a violation of his right to non-discrimination as well as his right to fair trial.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and the Protocol on 10 February 2006. The Respondent State deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court has held that this withdrawal had no effect on pending cases as well as all new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, i.e. one (1) year after its deposit. [2]

[2] *Andrew Ambrose Cheusi v United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations) § 38.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that in 2006, the Applicant was charged with the offence of rape before the District Court of Kahama. At the end of trial, the District Court convicted the Applicant and sentenced him to thirty (30) years imprisonment and twenty-four (24) strokes of the cane.

4. Aggrieved with the verdict of the District Court, the Applicant appealed to the High Court sitting at Tabora. On 4 November 2008, the High Court dismissed his appeal. Subsequently, the Applicant appealed to the Court of Appeal, sitting at Tabora, which also dismissed his appeal on 29 June 2011.

B. Alleged violations

5. The Applicant alleges a violation of Article 2 of the Charter due to the manner in which the Court of Appeal treated his appeal and Article 7(1)(c) of the Charter due to the fact that he was not accorded legal representation during his trial.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 14 September 2017 and served on the Respondent State on 27 April 2018.

7. The Respondent State filed its Response on 27 August 2018.

8. The Parties filed the rest of their submissions within the time stipulated by the Court and pleadings were closed on 17 June 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

9. The Applicant Court to quash both the conviction and sentence pronounced on the Applicant and to order his release".

10. In his submissions on reparations, the Applicant prays the Court to order the Respondent State to pay him the sum of Forty Eight Million Six Hundred and Forty Thousand Tanzanian Shillings (TZS48 640 000) as compensation. He also prays the Court to order the Respondent State to pay further compensation as reparation for indirect harm suffered, in an amount to be determined by the Court.

11. With regard to jurisdiction and admissibility, the Respondent State prays the Court:

    i. To find that the African Court on Human and Peoples' Rights lacks jurisdiction to hear the Application.
    ii. To find that the Application does not meet the admissibility requirements provided for under Rule 40(5) of the Rules of Court;
    iii. To find that the Application does not meet the admissibility requirements provided for under Rule 40(6) of the Rules of Court
    iv. To find that the Application be declared inadmissible
    v. To dismiss the Application.

12. Regarding the merits of the Application, the Respondent State prays the Court:

i. To find that the Government of the United Republic of Tanzania has not violated the Applicant's rights under Article 2 of the African Charter on Human and Peoples' Rights;

ii. To find that the Government of the United Republic of Tanzania has not violated the Applicant's rights under Article 3(1), (2) of the African Charter on Human and Peoples' Rights;

iii. To find that the Government of the United Republic of Tanzania has not violated the Applicant's rights under Articles 7(1)(c) of the African Charter on Human and Peoples' Rights and 10(2) of the Protocol to the African Court on Human and Peoples' Rights.

iv. To dismiss the Application for lack of merit.

v. To dismiss all of the Applicant's prayers.

vi. To dismiss the Applicant's request for reparations.

vii. To order the Applicant to bear the costs of the proceedings.

13. In its submissions on reparations, the Respondent State prays the Court:

i. To find that the Respondent State has not violated the African Charter or the Protocol and that the Respondent State Applicant treated the Applicant fairly and with dignity;

ii. To dismiss the request for reparations;

iii. To make any other order that this Court deems appropriate and and necessary under the circumstances of the instant case.

V. JURISDICTION

14. The Court recalls that Article 3 of the Protocol provides as follows:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter,

this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

15. The Court observes that pursuant to Rule 39(1)[3] of the Rules, it shall conduct a preliminary examination of its jurisdiction ... in accordance with the Protocol and these Rules."

16. Based on the above-cited provisions, the Court must, preliminarily, ascertain its jurisdiction and rule on objections to its jurisdiction, if there are any.

17. In the instant Application, the Respondent State has raised two objections to the Court's jurisdiction in relation to These will be addressed in turn.

A. Objections to jurisdiction

i. Objection that the Court lacks material jurisdiction

18. The Respondent State contends that the Court does not have material jurisdiction with regard to "the prayers conviction and sentence." According to the Respondent State, the Court lacks jurisdiction to quash the conviction and sentence of the Applicant and that if it did so, it would be "overturning decisions of the Court of Appeal of Tanzania, the highest court of the land."

19. The Applicant did not make any submissions on this point.

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[3] Formerly, Rule 39(1), Rules of Court, 2 June 2010.

20. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.

21. The Court notes that the Respondent State submits that, if the Court assumed jurisdiction, it would be acting as an appellate court with respect to a decision rendered by the highest court of Tanzania. The Court recalls its consistent jurisprudence, according to which "…it is not an appellate court to decisions of [4]. The foregoing notwithstanding, and as the Court has previously emphasised, "… this does not preclude relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State [5].

22. The Court thus holds that, in considering the instant case, therefore, it will not be sitting as an appeal court with respect to the decision of the Respondent State's Court. In view of the foregoing, the Court dismisses the Respondent State's objection.

ii. Objection alleging that the Court lacks temporal jurisdiction

23. The Respondent State submits that the Court does not have temporal jurisdiction as the facts alleged by the Applicant are not of a continuing nature to the Respondent State, "the Applicant committing an offence, in application of the law."

[4] *Kalebi Elisamehe v United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgment of 26 June 2020 (merits and reparations) § 18

[5] *Kenedy Ivan v. United Republic of Tanzania*, ACtHPR, Application No. 25/2016, Judgment of 28 March 2019 (merits and reparations) § 26; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 247 § 33.

24. The Applicant did not make any submissions on this point.

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25. Regarding temporal jurisdiction, the Court recalls that the same is established insofar as the violations alleged occurred after the Respondent State became a party to the Charter and the Protocol.[6] In respect of continuing violations, the Court further recalls that it has established that their essence is that they automatically renew themselves for as long as the Respondent State does not take steps to remedy them.[7]

26. As pointed out earlier, the Respondent State became a Party to the Charter in 1986 and the Protocol in 2006 and it further deposited the Declaration in 2010. In this context, the Court notes that the violations alleged by the Applicant stem from judicial proceedings which commenced in 2006 and ended in 2011, when the Court of Appeal dismisse

27. Accordingly, the Court finds that the Respondent State was a Party to both the Charter and the Protocol and had also deposited the Declaration at the time the alleged violation of the Applicant's rights was committed. The Court, therefore, concludes that it has temporal jurisdiction to hear the instant Application and dismisses the Respondent State's objecti o

B. Other aspects of jurisdiction

28. The Court observes that the Respondent State does not raise any objection to its personal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled.

[6] *TLS and others v Tanzania* (merits) (14 June 2013) 1 AfCLR 34 § 84.
[7] See, *Jebra Kambole v Tanzania*, ACtHPR, Application No. 018/2018, Judgment of 15 July 2020 (merits and reparations) § 52.

29. Regarding its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment, that the Respondent State, on 21 November 2019, deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or on new cases filed before the withdrawal takes effect.[8] Since any such withdrawal of the Declaration takes effect twelve (12) months after the notice of withdrawal is deposited, the effective date for the Re November 2020.[9] This Application having been filed before the Respondent State deposited its notice of withdrawal is thus not affected by it.

30. In view of the foregoing, the Court finds that it has personal jurisdiction to examine the instant Application.

31. Regarding its territorial jurisdiction, the Court notes that it is not disputed that the violations alleged by the Applicant occurred within the territory of the Respondent State. In the circumstances, the Court considers that it has territorial jurisdiction.

32. In view of the foregoing, the Court concludes that it has jurisdiction to hear Application.

VI. ADMISSIBILITY

33. Article 6(2) of the Protocol provides: " [he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."

[8] *Andrew Ambrose Cheusi v United Republic of Tanzania* §§ 35-39.
[9] *Ingabire Victoire Umuhoza v United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562 § 67.

34. Rule 50(1) of the Rules provides: "[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the[10] Protocol and these

35. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter request anonymity;
> b. Are compatible with the Constitutive Act of the African Union and with the Charter;
> c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d. Are not based exclusively on news disseminated through the mass media;
> e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and
> g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the Charter.

A. Objections to the admissibility of the Application

36. The Respondent State raises two objections to the admissibility of the Application. The first objection relates to the requirement to exhaust local remedies while the second relates to whether the Application was filed within a reasonable time.

[10] Formerly Rule 40 Rules of Court, 2 June 2010.

i. Objection based on non-exhaustion of local remedies

37. The Respondent State argues that the Applicant has not exhausted all the remedies provided for in domestic law to address his grievances. The Applicant however did not exercise these remedies as stated above. Specifically, the Respondent State affirms that the Applicant could have applied for legal aid both before the High Court and before the Court of Appeal and that he could also have raised the lack of legal aid as ground for appeal. Given that the Applicant alleges that his trial was delayed, the Respondent State submits that he could have raised this either as a ground for his appeals or for requesting a review of the Court of Appeal's judgment. The Respondent State submits that by failing to avail himself of the aforementioned legal remedies, the Applicant did not exhaust local remedies.

38. The Applicant contends that he exhausted local remedies when the Court of Appeal dismissed his case.

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39. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies. The Court confirms that the rule of exhaustion of local remedies aims at providing States the opportunity to cure human rights violations within their jurisdictions before an international human rights protection body is called upon to determine the State's responsibility for any such violations.[11]

40. The Court recalls that it has held that once criminal proceedings against an applicant have been determined by the highest appellate court, the

[11] *African Commission on Human and Peoples' Rights v Kenya* (merits) (26 May 2017) 2 AfCLR 9 §§ 93-94.

Respondent State will be deemed to have had had the opportunity to cure the violations which, according to the Applicant, resulted from the proceedings.[12]

41. In the instant case, the Court notes that the Appli
Court of Appeal, the highest court of the Respondent State, was determined when that Court rendered its judgment on 29 June 2011. Therefore, the Respondent State had the opportunity to cure the violations allegedly committed during the Appli in first instance and on appeal.

42. With respect to review, the Court has held that an application for review of the Court of Appeal is not a judgment Respondent State and an extraordinary remedy which applicants are not required to exhaust.[13]

43. Consequently, the Court holds that the Applicant exhausted local remedies as stipulated under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules. Accordingly, it dismisses the Respondent State exhaustion of local remedies.

ii. Objection based on the failure to file the Application within a reasonable time

44. The Respondent State submitted that the Application was not filed within a "... the reasonable period of time." According to the Court of Appeal delivered its judgment on 30 June 2011 and the Applicant filed the instant Application on 14 September 2017 ... a period of seven (7) years and six (6) months elapsed between the date on which the Respondent accepted the competence of the Court and the date on which the Applicant filed his Application with the Court." While conceding that determined on a case by case basis, the

[12] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599 § 76.
[13] *Ibid* 78.

period of seven (7) years and six (6) months cannot be described as r e a s o n a b l e ”

45. The Applicant did not make any submissions on this point.

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46. The Court recalls that Article 56(6) of the Charter and Rule 50(2)(f) of the Rules do not specify any period within which Applicants should seize the Court. Rather, these provisions mention the filing of Applications within a reasonable time from the date when local remedies were exhausted or from the date the Commission is seized of the matter. The Court notes that, in the instant case, the time within which the Application should have been filed must be computed from the date the Court of Appeal dismissed the Applicant's appeal i.e. 29 June 2011. Since the Application was filed with the Court on 14 September 2017, the period to be considered is six (6) years, two (2) months and sixteen (16) days.

47. In its jurisprudence, the Court has consistently reiterated that “ t h e reasonableness of a time limit of seizure will depend on the particular circumstances of each case and should be determined on a case-by-case basis. [14] Some of the factors that the Court considers in determining the reasonableness of time include the personal situation of the Applicant, that is, whether he/she is incarcerated, is a lay person in matters of law, or is indigent, or if the Applicant attempted to exhaust extraordinary remedies.[15]

48. Importantly, the Court has confirmed that it is not enough for an applicant to simply plead that he/she was incarcerated, is lay or indigent, for example, to justify his/her failure to file an Application within a reasonable period of time.

[14] See, *Norbert Zongo and others v. Burkina Faso* (preliminary objections) (25 June 2013) 197 § 121.
[15] See, *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101 § 44.

As the Court has previously pointed out, even for lay, incarcerated or indigent litigants there is a duty to demonstrate how their personal situation prevented them from filing their Applications timeously. It was because of the foregoing that the Court concluded that an Application filed after five (5) years and eleven (11) months was not filed within a reasonable time.[16] The Court reached the same conclusion in respect of an Application filed after five (5) years and four (4) months.[17] In yet another case, the Court found that the period of five (5) years and six (6) months was also not a reasonable period of time within the meaning of Article 56(5) of the Charter.[18]

49. The Court recalls that in yet another case, where the Applicant took five (5) years and eight (8) months to file his application, while noting that the Applicant was incarcerated and restricted in his mobility, it, nevertheless dismissed the application for failing to comply with Article 56(5) of the Charter.[19] In this Case, the Court emphasised the need for applicants to demonstrate**,** not just that they were indigent or incarcerated, for example, but also that their personal situation materially affected their ability to file their applications within a reasonable time.

50. In the instant case, the Applicant simply affirms that he exhausted local remedies. Although the Applicant was, at the material time, incarcerated he has provided the Court with neither evidence not cogent arguments to demonstrate that his personal situation prevented him from filing the Application timeously.

[16] *Hamad Mohamed Lyambaka v United Republic of Tanzania,* ACtHPR, Application No. 010/2016. Ruling of 25 September 2020 (admissibility) § 50.
[17] *Godfred Anthony and another v United Republic of Tanzania*, ACtHPR, Application No. 015/2015. Ruling of 26 September 2019 (admissibility) § 48.
[18] *Livinus Daudi Manyuka v United Republic of Tanzania*, ACtHPR, Application No. 020/2015. Ruling of 28 November 2019, (admissibility) § 55.
[19] *Yusuph Hassani v United Republic of Tanzania,* ACtHPR, Application No. 029/2015. Ruling of 30 September 2021 (admissibility) § 82-84.

51. In the absence of any cogent explanation(s) as to why the Applicant took six (6) years, two (2) months and sixteen (16) days to file the Application, the Court upholds the Respondent State's submission and holds that this Application was not filed within a reasonable period of time as required by Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules.[20]

B. Other conditions of admissibility

52. Having found that the Application has not satisfied the requirement in Rule 50(2)(f) of the Rules, the Court need not consider whether it complies with the admissibility requirements set out in Article 56(1), (2), (3), (4), and (7) of the Charter as restated in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as these conditions are cumulative.[21]

53. In view of the foregoing, the Court declares the Application inadmissible.

VII. COSTS

54. The Applicant did not make any prayers in respect of costs.

55. The Respondent State prayed that "the cost of this Application be borne by the Applicant".

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56. The Court notes that Rule 32(2) of its Rules provides that "unless decided by the Court, each party shall bear its own costs".[22]

[20] Formerly Rule 40(6) Rules of Court, 2 June 2010.

[21] *Ghaby Kodeih v. Republic of Benin*, ACtHPR, Application No. 006/2020, Ruling 30 September 2021 (Jurisdiction and admissibility) § 71 and *Yusuph Hassani v. United Republic of Tanzania*, ACtHPR, Application No. 029/2015 Ruling 30 September 2021 (Jurisdiction and admissibility) § 86.

[22] Formerly Rule 30 Rules of Court, 2 June 2010.