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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 and 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 Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court[1] (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Mohamed Selemani MARWA
Self-represented

Versus

UNITED REPUBLIC OF TANZANIA
Represented by:

i. Mr. Gabriel P. MALATA, Solicitor General, Office of the Solicitor General;
ii. Ms. Sarah MWAIPOPO, Director, Division of Constitutional Affairs and Human Rights, Principal State Attorney,
iii. Ambassador Baraka LUVANDA, Director Legal Affairs, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation;
iv. Ms. Nkasori SARAKIKYA, Assistant Director, Division of Constitutional Affairs and Human Rights, Principal State Attorney, Attorney General's Chambers;
v. Ms. Sylvia MATIKU, Principal State Attor and

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

vi. Mr. Elisha SUKA, Foreign Service Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

after deliberation,

renders the following Judgment:

I. THE PARTIES

1. Mohamed Selemani Marwa (hereinafter referred to as "the Applicant") is a national of Tanzania who, at the time of filing the Application was serving a thirty (30) year prison sentence at Butimba Central Prison, Mwanza Region, having been convicted of the offence of armed robbery. He challenges the circumstances of his 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 to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), through which it accepted the competence of the Court to receive applications 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 held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, on 22 November 2020.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record before the Court, that the Applicant was arrested on 17 October 2005 and charged on 24 October 2005, before the District Court of Nyamagana at Mwanza, in Criminal Case No. 1122/2005, with the offence of armed robbery. The Applicant was convicted on 2 August 2007 and sentenced to thirty (30) years in prison.

4. The Applicant filed an appeal on 17 October 2008, before the High Court sitting at Mwanza, being Criminal Appeal No. 71/2008, and on 3 August 2009 this appeal was dismissed.

5. On 6 August 2009, the Applicant filed a further appeal to the Court of Appeal of Tanzania sitting at Mwanza, being Criminal Appeal No. 26/2010. In its judgment of 17 September 2012, the Court of Appeal dismissed this appeal in its entirety.

6. On 9 November 2012, the Applicant filed an application for Review of the Court of Appeal, under Miscellaneous Criminal Application No. 7/2014. On 18 September 2014, the Court of Appeal, dismissed the application for review in its entirety.

B. Alleged violations

7. In his Application, the Applicant alleges that the Respondent State violated his rights, notably:

    i. The right to non-discrimination, protected by Article 2 of the Charter; and
    ii. The right to equality before the law and equal protection of the law, protected by Article 3(1) and (2) of the Charter.

8. In his Reply, the Applicant alleges in addition the violation by the Respondent State of:
    i. Its obligations under the Charter, guaranteed under Article 1 of the Charter;
    ii. The right to dignity, guaranteed under Article 5 of the Charter;
    iii. The right to a fair trial, protected by Article 7 of the Charter;
    iv. Peoples' equality, protected by Article 19 of the Charter; and
    v. Its duty to guarantee the independence of its Courts, protected by Article 26 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. The Application was filed on 3 March 2016 and was served on the Respondent State on 21 April 2016.

10. The Parties filed their pleadings within the time stipulated by the Court.

11. Pleadings were closed on 23 July 2019 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. In his Application, the Applicant prays the Court "to grant the appli
quash the applicant's conviction and set
Protocol".

13. In his Reply, the Applicant prays the Court to order the following measures**:**

    i. A Declaration that the respondent state has violated the applica
    guaranteed under the African Charter, in particular, Article 1 and 7.
    ii. A Declaration that the respondent state violated Articles 2, 3, 5, 7, 19 and 26 of the charter of the court.

iii. An order that the respondent state takes immediate steps to remedy the violations.

iv. An order for reparations.

v. Any other orders or remedies that this Honourable court shall deem fit.

14. In his submissions on reparations, the Applicant prays the Court to order his acquittal as basic reparation and adding the reparation of payment, to be "considered and assessed by the court ac the national ratio of a citizen income p

15. The Applicant further requests the Court to order his acquittal after the Court finds that his conviction and sentence was caused by the prejudice of the Respondent State in failing to avail him of legal assistance.

16. In its Response, with regard to the Court's j Application, the Respondent State prays the Court to order the following measures:

i. That, the Honourable African Court on Human and Peoples' Ri is not vested with jurisdiction to adjudicate this Application.

ii. That, the Application has not met the admissibility requirements stipulated under Rule 40(5) of the Rules of Court.

iii. That, the Application has not met the admissibility requirements stipulated under Rule 40(6) of the Rules of Court.

iv. That, the Application be declared inadmissible and duly dismissed.

v. That, the costs of this Application be borne by the Applicant.

17. With regard to the merits of the Application, the Respondent State prays the Court to order the following measures:

i. That, the Government of the United Republic of Tanzania did not violate the Applicant's by Article 2 of the African Charter on Human and Peoples' Rights

ii. That, the Government of United Republic of Tanzania did not violate the Applicant's rights under Article 3(1) and (2) of the African Charter on Human and Peoples' Rights;

iii. That, the Government of United Republic of Tanzania did not violate the Applicant's rights 7 of the African Charter on Human and Peoples' Rights under Artic

iv. That, the Applicant's conviction was based on reasonable doubt.

v. That, the Applicant's prayers be dismis

vi. That, the Application be dismissed in its entirety for lack of merits.

vii. That, the cost of this Application be borne by the Applicant.

V. JURISDICTION

18. The Court observes 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.

19. The Court further observes that pursuant to Rule 49(1) of the Rules, it "shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."[3]

20. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

21. In the present Application, the Court notes that the Respondent State has raised an objection to its material jurisdiction.

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

A. Objection to material jurisdiction

22. The Respondent State argues that the Court is not vested with jurisdiction to adjudicate on this matter. According to the Respondent State, the present Application calls for the Court to sit as an appellate court and adjudicate points of law and evidence already finalised by the Respondent State's highest court, the Court of Appeal of the United Republic of Tanzania. For this reason, the Respondent State prays that the Application should be dismissed.

23. In his Reply, the Applicant states that his Application is not aimed at inviting the Court to sit as an appellate court, rather he is seeking the Court to evaluate in respect of international human and peoples' rights standards, the manner in which the Respondent State's courts evidence before them.

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24. 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.[4]

25. In relation to the objection that it would be exercising appellate jurisdiction the Court reiterates its position that it does not exercise appellate jurisdiction with respect to claims already examined by national courts.[5] At the same time, however, and even though the Court is not an appellate court *vis-à-vis* domestic courts**,** it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned.[6] In conducting the aforementioned task, the Court does not thereby become an appellate court.

[4] *Kalebi Elisamehe v United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgment of 26 June 2020, § 18.
[5] *Ernest Francis Mtingwi v Malawi* (jurisdiction) §§ 14-16.
[6] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477 § 33; *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520 § 29 and *Alex Thomas v. United Republic of Tanzania* (Merits) (20 November 2015) 1 AfCLR 465, § 130.

26. In the instant case and in view of the allegations made by the Applicant, which all involve rights protected under the Charter, the Court finds that the said allegations are within the purview of its material jurisdiction.[7] The Court, therefore, dismisses the objection and holds that it has material jurisdiction.

B. Other aspects of jurisdiction

27. The Court observes that no objection has been raised with respect to its personal, temporal 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 before proceeding.

28. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that, on 21 November 2019, the Respondent State 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 it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or 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 Respondent State's withdrawal was 22 November 2020.[9] This Application having been filed before the Respondent State deposited its notice of withdrawal is thus not affected by it.

29. In light of the above, the Court finds that it has personal jurisdiction to examine the present Application.

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[7] *Alex Thomas v. Tanzania* (merits) § 130. See also, *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599 § 29; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101 § 28; and *Ingabire Victoire Umuhoza v. Republic of Rwanda* (merits) (24 November 2017) 2 AfCLR 165 § 54.

[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.

30. In respect of its temporal jurisdiction, the Court notes that all the violations alleged by the Applicant arose after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the alleged violations are continuing in nature since the Applicant remains convicted on the basis of what he considers an unfair process.[10] Given the preceding, the Court holds that it has temporal jurisdiction to examine this Application.

31. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that it has territorial jurisdiction.

32. In light of the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

33. Pursuant to Article 6(2) of the Protoc
admissibility of cases taking into account the provisions of Article 56 of the Charter".

34. In line with Rule 50(1) of the Rules,[11] "the Court shall ascertai
of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the 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;

[10] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Ho* (preliminary objections) (21 June 2013) 1 AfCLR 197 §§ 71 – 77.
y t des F
[11] Formerly Rule 40 of the Rules of Court, 2 June 2010.

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 set by the Court as being the commencement of the time limit within which it shall be 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 Constitutive Act of African Union or the provisions of the Charter.

A. Objections to the admissibility of the Application

36. The Respondent State has raised two objections to the admissibility of the Application. The first objection relates to the requirement of exhaustion of local remedies and the second relates to whether the Application was filed within a reasonable time.

i. Objection based on non-exhaustion of local remedies

37. The Respondent State argues that since the provisions of the Charter alleged to have been violated are also guaranteed under the Constitution of the Respondent State, the Applicant should have first instituted a constitutional petition under the Basic Rights and Duties Enforcement Act.

38. The Respondent State contends that the Applicant's failure to file a constitutional petition at the High Court is evidence that the Applicant has not afforded the Respondent State an opportunity to redress the alleged wrong within the framework of its domestic legal system before it is dealt with at the international level.

39. The Respondent State submits that it is premature for the Applicant to have instituted this matter before this Court before having exhausted the available local remedy of instituting a constitutional petition at the High Court of the Respondent State for the enforcement of the alleged violation of his rights.

40. For these reasons, the Respondent State submits that the Application does not meet the admissibility requirement under Rule 40(5) of the Rules of Court[12] and must accordingly be declared inadmissible.

41. In his Reply, the Applicant disputes the submission by the Respondent State. According to the Applicant, he was not compelled by the procedure under the Basic Rights and Duties Enforcement Act to institute a constitutional petition, because he had already applied and appeared before the Court of Appeal and his appeal was dismissed in its entirety by the highest court of the Respondent State. The Applicant submits that to turn to the High Court which is a lower court than the Court of Appeal is illogical.

42. The Applicant further submits that this procedure is an extra-ordinary remedy which he is not bound to exhaust.

43. The Applicant therefore claims that the baseless and should be dismissed in its entirety.

***

44. 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 rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine[13] the Sta

[12] Corresponding to Rule 50(2)(e) of the Rules of 25 September 2020.
[13] *African Commission on Human and Peoples' Rights v. [illegible]* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

45. The Court recalls that it has held that, in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.[14]

46. In the instant case, the Court notes that the Applica
of Appeal, the highest judicial organ of the Respondent State, was determined when that Court rendered its judgment on 17 September 2012. Therefore, the Respondent State had the opportunity to address the violations allegedly arising from the Applicant's trial and a

47. Regarding the Respondent State's conteni
filed a constitutional petition, the Court has previously held that the constitutional petition with in the Respondent State's j
extraordinary remedy which applicants are not required to exhaust before filing their applications before this Court.[15]

48. In light of the foregoing, the Court disr
based on the non-exhaustion of local remedies.

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

49. The Respondent State contends that since the Application was not filed within a reasonable time after the local remedies were exhausted, the Court should find that the Application has failed to comply with the provisions of Rule 40(6) of the Rules.[16]

50. The Respondent State recalls that the judgment of the Court of Appeal was delivered on 17 September 2012 and that this Application was filed on 3 March

[14] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 76.
[15] *Alex Thomas v. Tanzania* (merits) §§ 63-65.
[16] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

2016, that is three (3) years and six (6) months after the Court of Appeal decision.

51. Relying on the African Commission on Human and Peoples' Rights in *Majuru v Zimbabwe*,[17] the Respondent State argues that the time limit established for filing applications is six (6) months after exhaustion of local remedies and therefore the Applicant ought to have filed the Application within six months after the Court of Appeal's judgment

52. The Respondent State further submits that the Applicant has not stated any impediment which caused him not to lodge the Application within six (6) months.

53. For these reasons the Respondent State submits that the admissibility requirement provided by Rule 40(6) of the Rules[18] has not been met and the Application should be declared inadmissible and duly dismissed.

54. The Applicant alleges that he filed his Application within a reasonable time after his appeal for a review of the Court of Appeal's judgment was di in its entirety on 18 September 2014.

55. The Applicant further submits that according to its Rules, the Court needs to weigh what constitutes a reasonable time to file the Application according to the circumstances of the case at hand. In the instant case, the Applicant claims not to be a lawyer and that he is a layman, indigent and a prisoner who was not represented by any lawyer at any stage and that he did not benefit from any counsel or advice after the decision of the Respondent St highest court.

[17] African Commission on Human and Peoples' Rights in *Michael Majuru v Zimbabwe* (2008) AHRLR 146 (ACHPR 2008).
[18] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.

56. In these circumstances, the Applicant submits that his Application complies with the admissibility requirements.

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57. The Court notes that neither the Charter nor the Rules specify the exact time within which Applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules merely provide that Applications must be filed "...within rea remedies were exhausted or from the date set by the Court as being the commencement of the time limit within whi
58. The Court has held "...that the reasonable depends on the specific circumstances of the case and should be determined on a case-by-case basis."[19]

59. From the record before the Court, the Applicant exhausted local remedies on 17 September 2012, being the date, the Court of Appeal delivered its judgment on his final appeal. Thereafter the Applicant filed the instant Application before this Court on 3 March 2016.

60. The Court therefore must assess whether this period of three (3) years, five (5) months and fifteen (15) days is reasonable in terms of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

61. The Court has previously considered the personal circumstances of applicants and found that, incarcerated, lay and indigent applicants being restricted in their movements, would have little or no information about the existence of the Court.[20]

[19] *Norbert Zongo and Others v Burkina Faso* (preliminary objection) (25 June 2013) 1 AfCLR 197 § 121.
[20] *Christopher Jonas v. Tanzania* (merits) § 54; *Amiri Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344 § 83; *Armand Guehi v. Tanzania* (merits and reparations) § 56; *Werema Wangoko v. Tanzania* (merits and reparations) § 49*; Kijiji Isiaga v. Tanzania* (merits) (21 March 2018) 2 AfCLR 218 § 55.

62. From the record before it, the Court notes that the Applicant has been incarcerated since 2005, and that he claims to be lay and indigent, which is not contested by the Respondent State.

63. The Court further notes that the Applicant filed an application for review of the Court of Appeal's judgment which was dismissed by the Respondent State's Court of Appeal on 18 September 2014.

64. The Court has considered as a relevant circumstance, the fact of filing of an application for review before the Court of Appeal of the Respondent State. In such cases, the Court held that it was reasonable for applicants to await the outcome of that review process. The Court therefore considered that this was an additional factor that may justify the delay by those applicants in filing their applications before this Court.[21]

65. Accordingly, the Court finds that it was reasonable for the Applicant to wait for his application for review of the Court of Appeal's judgment and that this contributed to him not filing the Application earlier than he did.

66. In the Court's view, all the foregoing circumstances constitute reasonable justification for the time the Applicant took to file the Application after the judgment of the Court of Appeal on 17 September 2012. The Court therefore finds that the period of three (3) years, five (5) months and fifteen (15) days the Applicant took to file the Application is reasonable in terms of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

67. In light of the above, the Court, dismisses the Respondent State's objection to the admissibility of the Application based on the alleged failure to file the Application within a reasonable time.

[21] *Armand Guehi v. Tanzania (*merits and reparations) § 56; *Werema Wangoko v. Tanzania*, (merits and reparations) §§ 48-49.

B. Other conditions of admissibility

68. The Court notes, from the record, that the Application's compliance requirements in Article 56 sub-articles (1), (2), (3), (4) and (7) of the Charter, which are reiterated in sub-rules 50(2)(a), (b), (c), (d), and (g) of the Rules, are not in contention between the Parties. Nevertheless, the Court must still ascertain that these requirements have been fulfilled.

69. Specifically, the Court notes that, according to the record, the condition laid down in Rule 50(2)(a) of the Rules is fu clear.

70. The Court notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and thus holds that it meets the requirement of Rule 50(2)(b) of the Rules.

71. The Court further notes that the Application does not contain any disparaging or insulting language with regard to the Respondent State, which makes it consistent with the requirement of Rule 50(2)(c) of the Rules.

72. Regarding the condition contained in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media.

73. Finally, with respect to the requirement laid down in Rule 50(2)(g) of the Rules, the Court finds that the present case does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter.

74. As a consequence of the foregoing, the Court finds that the Application fulfils all the admissibility requirements set out under Article 56 of the Charter, as restated in Rule 50 of the Rules, and accordingly finds it admissible.

VII. MERITS

75. The Applicant alleges that the Respondent State's co
the basis of evidence which was not proven in accordance with the standards required by law, that is, beyond reasonable doubt. The Applicant contends that this is contrary to Article 3(1) and (2) of the Charter.

76. The Applicant alleges that his conviction merely relied on his identification at the scene of the incident. He also states that the prosecution's evidence did not establish the intensity and location of the source of light at the scene of the crime, the distance between the Applicant and observers of the incident, the size of the area (room) of the scene and the description of the Applicant.

77. The Applicant further claims that the evidence has fundamental contradictions and inconsistencies. According to him, these matters confirm that the case was not proven beyond reasonable doubt.

78. The Respondent State disputes the Applic
was convicted based on evidence proven beyond reasonable doubt.

79. The Respondent States submits that there were no contradictions and inconsistencies in the evidence that the High Court held that the differences in the evidence were minor. The Respondent State argues that the evidence against the Applicant was "watertight and prov
reasonable". The Respondent State also submits that these elements were duly considered by the Court of Appeal which also found no ground for concern. Therefore, the Respondent State submits that this allegation lacks merit and should be dismissed.

80. The Respondent State further claims that the Applicant was properly identified at the scene of the crime. Specifically, the Respondent State states that the evidence on record clearly shows that the prosecution witnesses PW1 and PW3 knew the Applicant before the incident, recognised his voice and his face at the scene of the crime as they were in close proximity to the Applicant for a considerable time during the incident while light was on, and that these two witnesses gave a clear description of the Applicant right after the said incident.

81. The Respondent States further states that the Applicant was not discriminated as he was afforded equal treatment and protection of the law as stipulated under Article 3(1) and (2) of the Charter.

82. For these reasons, the Respondent State c
lacks merit and should be dismissed.

83. In his Reply, the Applicant maintains that he was not properly identified at the scene of the crime by PW1 and PW3. The Applicant further states that the evidence of PW3 was expunged by the trial court and that the Applicant was acquitted on his second count in relation to the alleged armed robbery involving PW3.

84. The Applicant alleges that PW1 and PW3 failed to name their assailant at the earliest possible moment. He claims that there was a contradiction in the evidence, whereby the witnesses allegedly first reported the crime to the street chairman (PW2), while from the record it appears that the street chairman (PW2) had stated to have been awoken and found a lot of people at his house, who informed him about the armed robbery.

85. The Applicant also submits that he was not arrested while wearing a black long coat and hat, nor were these clothing items tendered in the Respondent State's could despite the prosecution relying on them as part of the basis for his identification.

86. He also avers that no independent witnesses from the various persons gathered at the scene of the crime were called to testify. According to the Applicant, the Respondent State was aware that if they brought prosecution any of them to testify, they would exonerate the Applicant.

***

87. The Court has held in its previous jurisprudence that:

> ...domestic courts enjoy a wide margin of appreciation in the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings. [22]

88. The above notwithstanding, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the assessment of the evidence, was done in consonance with international human rights standards.

89. The record before this Court shows that the prosecution called four (4) witnesses. The Court further notes that the Respondent State's courts considered that the prosecution witnesses PW1 and PW3 identified the Applicant as their neighbour with whom they share a common street chairman (PW2), that the prosecution witnesses recognised the Applicant's voice and his face at the scene of the crime and that they were in close proximity to the Applicant for a long time during the incident.

90. The Court also takes notice that the Respondent State's courts took into consideration that a light was on at the material time, that the two witnesses gave a clear description of the Applicant and that he was named and identified at the earliest possible opportunity.

[22] *Kijiji Isiaga v. Tanzania* § 65.

91. The Court further notes that the appellate courts considered the differences in the prosecution's evidence and concluded that they were not of any nature to undermine the finding that the Applicant was positively identified.

92. The Court observes that the question of identification of the Applicant was considered exhaustively by the trial and appellate courts and that the Applicant did not provide proof that the manner in which these courts evaluated this evidence revealed manifest errors requiring intervention.

93. Accordingly, the Court holds that the Applicant has failed to prove that the Respondent State violated his rights and therefore dismisses his allegation.

94. Furthermore, the Court notes that the Applicant has not made specific submissions nor provided evidence that the Respondent State violated its obligations under the Charter (Article 1 of the Charter), that he was discriminated against (Article 2 of the Charter), that he was not treated equally before the law or did not enjoy equal protection of the law (Article 3 of the Charter), that his right to dignity was violated (Article 5 of the Charter), that his fair trial rights were violated (Article 7 of the Charter), that his peoples' right to equality were violated (Article 19 of the Charter), or that the Respondent State violated its duty to guarantee the independence of its Courts (Article 26 of the Charter).

95. In these circumstances, the Court finds that the Respondent State did not violate Articles 1, 2, 3, 5, 7, 19 and 26 of the Charter.

VIII. REPARATIONS

96. The Applicant prays the Court to order his acquittal as basic reparation and adding the reparation of payment, to be court according to the custody period per the national ratio of a citizen income per year in the country."

97. The Respondent State did not respond to the Applicant's submiss reparations.

***

98. Article 27(1) of the Protocol provides t been violation of a human or peoples' ri to remedy the violation, including the payment of fair compensation or reparation."

99. Having found that the Respondent State has not violated any of the Appli rights, the Court dismisses the Applicant's prayers

IX. COSTS

100. The Applicant did not make any submissions on costs.

101. The Respondent State prayed that costs be borne by the Applicant.

***

102. Pursuant to Rule 32 of the Rules of Co the Court, each party shall bear its own

103. The Court finds that there is nothing in the instant case warranting it to depart from this provision.

104. Consequently, the Court orders that each party shall bear its own costs.

X. OPERATIVE PART

105. For these reasons: