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

THE MATTER OF

ROBERT RICHARD

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 035/2016

JUDGMENT

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.

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"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the matter of

Robert RICHARD
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; Attorney General's Chambers
iii. Ambassador Baraka LUVANDA, Director, Legal Affairs, Ministry of Foreign Affairs, East Africa and International Cooperation
iv. Ms Nkasori SARAKIKYA, Principal State Attorney; Attorney General's Chambers
v. Mr Mussa MBURA, Director, Civil Litigation and
vi. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs, East Africa

After deliberation,

renders the following judgment:

I. THE PARTIES

1. Robert Richard (hereinafter referred to as "the Applicant"), is a national of Tanzania, who at the time of filing the Application, was imprisoned at Ukonga Central Prison having been convicted of sodomy and sentenced to life imprisonment. He alleges the violation of his right to be tried within a reasonable time.

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 jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited an instrument withdrawing its Declaration with the Chairperson of the African Union Commission. The Court held that this withdrawal did not have any effect on pending cases as well as new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period one (1) year after its deposit. [1]

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that the Applicant was charged on 22 August 2004 with sodomizing a child who was one (1) year and five (5) months old. He was convicted and sentenced to the statutory penalty of life imprisonment.

[1] *Andrew Ambrose Cheusi v United Republic of Tanzania,* ACHPR, Application No. 004/2015, Judgment of 26 June 2020 § 38.

4. The Applicant alleges that he appealed against his conviction and sentence at the High Court of Tanzania at Dar es Salaam in Criminal Appeal No. 84 of 2008. He contends that the hearing of his appeal began on 15 April 2009 but was pending at the time of filing of the Application on 8 June 2016.

5. On 26 September 2018, the High Court of Tanzania sitting in Dar es Salaam, delivered its judgment in Criminal Appeal No. 84 of 2008, *Robert Richard v the Republic* in which the judge allowed the appeal, quashed the conviction, "set aside the sentence of life imprisonment" meted out to the Applicant and ordered his release.

B. Alleged violations

6. The Applicant alleges the violation of his right to be tried within a reasonable time as guaranteed under Article 7(1)(d) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 8 June 2016 and served on the Respondent State on 7 September 2016.

8. On 1 September 2017, the Respondent State transmitted its list of representatives, but failed to file its Response despite the fact that it was sent reminders in that regard, on 24 January 2017, 7 December 2017, 6 August 2018, 25 September 2018, 26 November 2018, 20 February 2019 and 9 July 2020. In addition, the Respondent State was informed on 25 September 2018 and 20 March 2019 that if it failed to file a Response within the stipulated time, the Court would proceed to deliver judgment in default.

9. On 6 August 2018, the Court requested the Applicant to file submissions on reparations but the Applicant failed to do so, despite having being sent reminders on 26 November 2018, 29 January 2019, 19 February 2019 and 30 July 2020.

10. The pleadings were closed on 6 May 2021 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to find in his favour and grant the appropriate relief.

12. The Respondent State did not participate in these proceedings and therefore did not make any prayers.

V. ON THE DEFAULT OF THE RESPONDENT STATE

13. Rule 63(1) of the Rules of Court provides that:

> Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

14. The Court notes that the afore-mentioned Rule 63(1) of the Rules sets out three conditions, namely: i) the notification to the Respondent State of both the application and the documents on file; ii) the default of the Respondent State; and iii) application by the other party or the Court on its own motion.

15. With regards to the first condition, namely, the notification of the Respondent State, the Court recalls that the Application was filed on 8 June 2016. The Court further notes that from 7 September 2016, the date of service of the Application on the Respondent State, to the date of the close of pleadings, the Registry notified the Respondent State of all the pleadings submitted by the Applicant. In this regard, the Court also notes from the record, the proof of delivery of those notifications. The Court concludes thus that the Respondent State was duly notified.

16. In respect of the second condition, the Court notes that, in the notice of service of the Application, the Respondent State, was granted sixty (60) days to file its Response. However, it failed to do so within the time allocated. The Court further sent seven (7) reminders to the Respondent State on the following dates: 24 January 2017, 7 December 2017, 6 August 2018, 25 September 2018, 26 November 2018, 20 February 2019 and 9 July 2020. Notwithstanding these reminders, the Respondent State did not file its Response. The Court thus finds that the Respondent State has failed to defend its case within the prescribed time.

17. Finally, on the third condition, the Court notes that it can render judgment in default either *suo motu* or on request of the other party. The Applicant having not requested for a default judgment, the Court decides *suo motu*, for the proper administration of justice to render the judgment by default**.**

18. The required conditions having thus been fulfilled, the Court enters this judgment by default.[2]

VI. JURISDICTION

19. 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.

[2] *African Commission on Human and Peoples' Rights v. Libya* (merits) (2016) 1 AfCLR 153 §§ 38-42.

20. In accordance with Rule 49(1) of the Rules "[t]he Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules".

21. The Court notes that, even though nothing on the record indicates that it lacks jurisdiction, it is obligated to determine if it has jurisdiction to consider the Application. In this regard, the Court notes, as earlier stated in this judgment, that, the Respondent State is a party to the Protocol**,** and that, on 29 March 2010, it deposited the Declaration with the African Union Commission. However, on 21 November 2019, it deposited an instrument withdrawing its Declaration.

22. In accordance with the Court's jurisprudence, the withdrawal of the Declaration does not apply retroactively. It only takes effect twelve (12) months after the notice of such withdrawal has been deposited. In this case, the effective date was 22 November 2020.[3]

23. In view of the above, the Court holds that it has personal jurisdiction.

24. As regards its material jurisdiction, the Court notes that the Applicant alleges violation of Article 7(1)(d) of the Charter to which the Respondent State is a party. Therefore, its material jurisdiction has been satisfied.

25. With respect to its temporal jurisdiction, the Court notes that the alleged violations occurred after the Respondent State ratified the Charter and the Protocol. Consequently, the Court holds that it has temporal jurisdiction to consider the Application.[4]

26. The Court further holds that it has territorial jurisdiction as the facts of the case occurred in the Respondent State's territory.

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[3] *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations), §§ 37-39.

[4] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197 §§ 71 - 77.

27. From the foregoing, the Court finds that it has jurisdiction to hear the instant case.

VII. ADMISSIBILITY

28. Article 6(2) of the Protocol provides that, "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter." Pursuant to Rule 50(1) of the Rules, "[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 Protocol and these Rules."

29. 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 the following conditions:
> a. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b. comply with the Constitutive Act of the Union and the Charter;
> c. not contain any disparaging or insulting language;
> d. not be based exclusively on news disseminated through the mass media;
> e. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. be filed 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. Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union."

30. The Court notes that the conditions of admissibility set out in Rule 50(2) of the Rules are not in contention between the Parties, as the Respondent State did not to take part in the proceedings. However, pursuant to Rule 50(1) of

the Rules, the Court is required to determine if the Application fulfils all the admissibility requirements as set out in Rule 50(2).

31. The Court notes that the Applicant has indicated his identity, and holds that the condition set out in Rule 50(2)(a) of the Rules has been met.

32. 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 stated in Article 3(h) is the promotion and protection of human and peoples' rights. The Court therefore 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.

33. 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.

34. With respect to the requirement set out under Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media.

35. With regard to Rule 50(2)(e) of the Rules on the exhaustion of local remedies, the Court reiterates what it has established in its case law that "the local remedies that must be exhausted by the Applicants are ordinary judicial remedies"[5], unless they are manifestly unavailable, ineffective and insufficient or the proceedings are unduly prolonged.[6]

36. Referring to the facts of the matter, the Court notes that the Applicant pursued local remedies by appealing against his conviction and sentence to

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[5] *Mohamed Abubakari v. Tanzania* (merits) (3 June 2016) 1 AfCLR 599 § 64. *See also Alex Thomas v. Tanzania* (merits) (20 November 2015) 1 AfCLR 465 § 64; and *Wilfred Onyango Nganyi and 9 others v. Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 95.

[6] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 77. *See also Peter Joseph Chacha v. Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 40.

the High Court in 2008, after which, through letters sent to the High Court Registry on 7 June 2012, 10 May 2013, 20 September 2013, 3 October 2013, 18 November 2013, 16 September 2014 and 3 August 2015, he made a follow-up on his case.

37. From the record, the Applicant received a response from the Deputy Registrar of the High Court on 12 August 2015 indicating that he "should be patient" and that the High Court would find a solution to his grievance. However, at the time of filing his Application, that is 8 June 2016, his appeal had not been determined**.** The Court notes that this is about seven (7) years later. Furthermore, the Respondent State did not take part in the proceedings before this court and consequently did not respond as to why it took so long for the Applicant's appeal to be determined, and there is nothing on record to indicate that the matter was fraught with complexity. It is evident that, the delay cannot be attributable to the Applicant since he sent seven letters of enquiry to the Respondent State regarding the delay **in** the finalisation of his appeal.

38. In light of the foregoing, the Court observes that the appeal in the domestic courts which had not been decided after the lapse of seven (7) years indicates that local remedies were unduly prolonged. In these circumstances, the Applicant could not have exhausted local remedies and thus falls within the exception under Rule 50(2)(e) of the Rules.

39. With regard to Rule 50(2)(f) of the Rules, which in substance restates Article 56(6) of the Charter, the Court notes that the Rule only requires an application to be filed 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."

40. As the Court has established, the reasonableness of the period for seizure of the Court depends on the particular circumstances of each case and must be determined on a case-by-case basis.[7]

41. In the present Application, the Court notes that the Applicant was unable to exhaust local remedies because they were unduly prolonged, the Court thus finds that the issue of filing the application within a reasonable time does not arise.[8]

42. Furthermore, the Application 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, the provisions of the Charter or of any legal instrument of the African Union in fulfilment of Rule 50(2)(g) of the Rules.

43. The Court, therefore, finds that this Application is admissible.

VIII. MERITS

44. The Applicant argues that his right to be tried within a reasonable time was curtailed as his appeal filed in 2008 had not been determined at the time of filing his Application. He avers that seven (7) years had lapsed without his appeal being determined. This was despite the fact that he sought for an explanation, and a resolution to the matter, by transmitting seven (7) letters of enquiry on the status of his appeal to the Deputy Registrar and the Judge of the High Court.

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45. Article 7(1)(d) of the Charter provides that everyone has "the right to be tried within a reasonable time by an impartial court or tribunal".

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[7] *Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248 § 57.
[8] See *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550 § 49.

46. The Court notes that various factors need to be considered when assessing whether justice was dispensed within a reasonable time, in accordance with Article 7(1)(d) of the Charter. These factors include the complexity of the matter, the behaviour of the parties, and the conduct of the judicial authorities who bear a duty of due diligence.[9]

47. The Court notes that the Applicant filed his appeal in 2008. The hearing commenced on 15 April 2009 but was not finalised until 26 September 2018. This amounts to a period of almost ten (10) years**.** With respect to the complexity of the case, the Court notes that there is nothing on record to show that his case involved complex issues that require such a long time to finalise his appeal.

48. The Court also notes that nothing on the record shows that the Applicant contributed to the delay. If anything, he demonstrated due diligence by requesting a quick resolution to his case through transmitting seven (7) letters of enquiry on 7 June 2012, 10 May 2013, 20 September 2013, 3 October 2013, 18 November 2013, 16 September 2014 and 3 August 2015 to the Deputy Registrar and the High Court Judge responsible for his appeal. Thus, the delay cannot be attributed to him.

49. As to whether the delay was attributable to the Respondent State, the Court notes that since the Respondent State did not respond to the Application, there is nothing on the record to explain why it took almost ten (10) years to determine the Applicant's appeal. When the Deputy Registrar of the High Court replied to the Applicant's seventh letter of enquiry on 12 August 2015, that is, at least six (6) years after the Applicant's first letter of enquiry about the status of his appeal, he urged the Applicant to be patient and that his matter would be resolved. Thus, the period of almost ten (10) years which

[9] See *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477 §§ 122-124. See also *Alex Thomas v. Tanzania* (merits) § 104; *Wilfred Onyango Nganyi and Others v. Tanzania* (merits) § 155; and *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, §§ 92-97, 152.

the High Court took to determine the appeal of the Applicant is unreasonable because of lack of due diligence on the part of the national authorities.[10]

50. The Court thus finds that the Respondent State has violated the Applicant's right to be tried within a reasonable time, contrary to Article 7(1)(d) of the Charter.

IX. REPARATIONS

51. The Applicant prays the Court to find in his favour and grant the appropriate relief.

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52. 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."

53. As it has consistently held, the Court considers that, for reparations to be granted, the Respondent State should first be intentionally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where it is granted, reparation should cover the prejudice suffered. Finally, the Applicant bears the onus to justify the claims made.[11]

54. The Court has earlier found that the Respondent State violated the Applicant's right to be tried within a reasonable time guaranteed under Article 7(1)(d) of the Charter. Based on these findings, the Respondent State's

[10] *Wilfred Onyango Nganyi v Tanzania* (merits)(18 March 2016) 1 AfCLR 507 155

[11] See *Armand Guehi v. Tanzania* (merits and reparations) § 157. See also, *Norbert Zongo and Others v. Burkina Faso* ((reparations) (5 June 2015) 1 AfCLR 258 §§ 20-31; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, §§ 52-59; and *Reverend Christopher R. Mtikila v. Tanzania* (reparations), §§ 27-29.

responsibility and causation have been established. The prayers for reparation are therefore being examined against these findings.

A. Pecuniary reparations

55. The Court observes, with respect to moral prejudice, that quantum assessment must be undertaken in fairness, and by looking at the circumstances of the case.[12]

56. The Court notes its finding that the Applicant's right to be tried within a reasonable time was violated, and observes that the Applicant suffered emotional distress due to the unduly prolonged wait for a decision on his appeal and therefore awards the Applicant the sum of Tanzanian Shillings Five Million (TZS 5,000,000).

B. Non- Pecuniary reparations

57. The Court notes that the Applicant requested for a decision in his favour and requested to be granted appropriate relief. The Court further notes that, in accordance with Article 27(1) of the Protocol, it has the power to order appropriate measures to remedy situations of human rights violations, including ordering the Respondent State to take the necessary measures to vacate the Applicant's conviction and sentence as well as to release him.[13]

58. In the instant case, the Court has found that the Respondent State violated the Applicant's right to be tried within a reasonable time as the High Court did not deliver judgment on his appeal until 26 September 2018. The Court

[12] See *Norbert Zongo and Others v. Burkina Faso* (Reparations) § 61. *Armand Guehi v Tanzania* (merits and reparations) § 177.
[13] *Alex Thomas v Tanzania* (merits) § 157; *Diocles William v Tanzania* (merits) (21 September 2018) 2 AfCLR 426 § 101; *Minani Evarist v Tanzania* (merits) (21 September 2018) 2 AfCLR 402 § 82; *Jibu Amir Mussa and Saidi Ally alias Mangaya v United Republic of Tanzania*, ACtHPR, Application No. 014/2015, Judgment of 28 November 2019 (merits) § 96; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 570 § 84.

notes however, that by the judgment of 26 September 2018, the High Court, allowed his appeal, quashed his conviction, and ordered his release.

59. Nevertheless, the Court observes that given the extent of the time which the Applicant waited for his exoneration, a duration of almost ten (10) years, it is appropriate for the Respondent State to publish this judgment.

60. In the circumstances, therefore, the Court orders the Respondent State to publish this Judgment within a period of three (3) months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one (1) year after the date of publication.

X. COSTS

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

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62. The Court notes that Rule 32(2) of its Rules provides that “unless otherwise decided by the Court, each party shall bear its own costs.”

63. Thus, the Court decides that each Party shall bear its own costs.

XI. OPERATIVE PART

64. For these reasons,

THE COURT,

Unanimously and in default:

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Declares* that the Application is admissible.

On merits

iii. *Finds* that the Respondent State violated the right of the Applicant to be tried within a reasonable time protected under Article 7(1)(d) of the Charter.

By a majority of Ten (10) for and One (1) against, Justice Blaise TCHIKAYA dissenting,

On reparations

Pecuniary reparations

iv. *Grants* Tanzanian Shillings Five Million (TZS 5,000,000) as reparations for moral prejudice in relation to the inordinate delay of the Applicant's appeal.

v. *Orders* the Respondent State to pay the amount indicated under sub-paragraphs (iv) free from taxes within six (6) months, effective from the notification of this Judgment, failing which it will pay interest on arrears calculated on the basis of the applicable rate of the Bank of Tanzania throughout the period of delayed payment and until the accrued amount is fully paid.

Non-pecuniary reparations

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

On implementation and reporting

vii. *Orders* the Respondent State to submit to it within six (6) months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

viii. *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 MAKAMULISA 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(1) of the Rules, the Dissenting Opinion of Justice Blaise TCHIKAYA is appended to this Judgment.

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