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GOZBERT HENERICO v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 056/2016
JUDGMENT ON MERITS AND REPARATIONS

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 10 January 2022

Arusha, Tanzania, 10 January 2022: The African Court on Human and Peoples' Rights (the Court), today delivered judgment in the case of *Gozbert Henerico v. United Republic of Tanzania*.

Gozbert Henrico, ("the Applicant") is a national of United Republic of Tanzania, ("the Respondent State"). At the time of filing the Application, he was at Butimba Central Prison, Mwanza Region, awaiting execution of the death sentence following his conviction and sentence for the offence of murder.

The Applicant, represented by the Pan African Lawyers Union (PALU), alleged the violation by the Respondent State of three rights under the African Charter on Human and Peoples' Rights ("the Charter"), namely: the right to a fair trial under Article 7, the right to life under Article 4, and the right to dignity under Article 5 of the Charter.

The Respondent State challenged the jurisdiction of the Court as well as the admissibility of the Application.

On jurisdiction, the Respondent State raised an objection to the material jurisdiction of the Court based on two grounds: first, that the Court lacked jurisdiction to reverse the decisions of its Court of Appeal and, secondly, that the Court is being called upon to sit as a court of first instance.

Rejecting both objections of the Respondent State, the Court held that it had material jurisdiction as the Applicant had alleged violations of rights protected under the Charter, to which the Respondent State is a Party; and that it is not sitting as an appellate court since it is empowered to examine relevant proceedings in the national courts in order to determine whether they are in



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accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned.

Although other aspects of its jurisdiction were not challenged, the Court nonetheless considered whether it had jurisdiction to hear the case.

With respect to its personal jurisdiction, the Court held that it had personal jurisdiction since on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol to the Charter on the Establishment of the African Court on Human and Peoples' Rights ("the Protocol") and this Declaration allows individuals to file applications against it as per Article 5(3) of the Protocol. The Court further found that the Respondent State's withdrawal of the said Declaration on 21 November 2019 did not affect this Application, as the withdrawal took effect on 22 November 2020, while the application was received at the Court on 10 February 2016. The Court further held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter and the Protocol. Lastly, the Court held that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State which is a Party to the Protocol.

On admissibility, the Respondent State objected to the admissibility of the Application on the ground that the Applicant failed to exhaust local remedies before seizing the African Court. In examining this objection, the Court noted that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when that Court rendered its judgment on 26 February 2016, therefore, the Respondent State had the opportunity to address the violations allegedly arising from the Applicant's trial and appeals. It also determined that there was no need for the Applicant to file an application for a constitutional petition or file for a review at the Court of Appeal within the Respondent State's judicial system, since these have been determined to be extraordinary remedies which applicants are not required to exhaust before filing their applications before this Court. Consequently, the Court held that the Applicant had exhausted local remedies as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, and therefore, dismissed the Respondent State's objection.



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The Court also examined the other requirements of admissibility under Article 56 of the Charter. It noted that the Application had satisfied the Admissibility requirements and thus, declared the same admissible.

On the merits, regarding the right to a fair trial, the Applicant had alleged that the proceedings leading to his conviction and sentencing for murder violated four (4) aspects of his right to a fair trial namely: the right to be tried within a reasonable time; the right to effective legal representation; the right to be tried by a competent court or tribunal; and the right to be provided with an interpreter.

On the first aspect of the right to be tried within a reasonable time, the Court observed that since the Applicant was in custody, the Respondent State had an obligation to ensure that the proceedings against him were handled with due diligence and expeditiously. Furthermore, that the Respondent State did not explain why, the Applicant's trial commenced six (6) years, eight (8) months and nineteen (19) days after his arrest. Consequently, the Court held that the Respondent State violated the Applicant's right to be tried within a reasonable time as provided for under Article 7(1)(d) of the Charter.

On the second aspect, regarding the alleged violation of the right to effective legal representation, the Court observed that for States to provide effective legal representation through free legal assistance schemes, it is not sufficient to simply provide a counsel. States must also ensure that those who provide legal assistance under that scheme have enough time and facilities to prepare an adequate defence, and to provide robust representation at all stages of the legal process, starting from the arrest of the individual for whom such representation is being provided. The Court further observed that there was nothing on the record to demonstrate that the Applicant informed the High Court or the Court of Appeal of the alleged shortcomings of his lawyers in conducting his defence. It further noted that the Applicant was free to raise, and should have raised his discontent about the manner in which he was represented by his lawyer. The Court subsequently held that the Respondent State had discharged its obligation to provide the Applicant with effective free legal assistance, therefore, it did not violate Article 7 (1) (c) of the Charter.



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On the third aspect regarding the alleged violation of the right to be tried by a competent court or tribunal, the Court observed that, from the record of proceedings at the High Court, the three (3) assessors participating in the trial simply sought clarifications from the Applicant, rather than cross-examine him as he had alleged. The Court also observed that the Applicant had not demonstrated how this violated his right to be heard by a competent tribunal and consequently dismissed the allegation. It held that that the Respondent State did not violate Article 7(1) of the Charter, with regard to the right to be tried by a competent court or tribunal.

On the fourth aspect regarding the alleged violation of the right to be provided with an interpreter, the Court observed that the record showed that during the Applicant's arraignment, when taking his plea, the statement was read over and explained to him in Kiswahili to which he responded in Kiswahili and thereafter a plea of not guilty was entered. Furthermore, that the Applicant never voiced his concerns about not being able to understand the proceedings because of a language barrier or at any point objected to the proceedings. The Applicant also failed to demand that an interpreter be provided. Consequently, the Court held that the Respondent State did not violate Article 7(1)(c) of the Charter as read together with Article 14(3) (a) of the ICCPR on the alleged failure to provide the Applicant with interpretation during his trial.

Regarding the alleged violation of the right to life, the Court considered that, although the Applicant has raised three separate grounds relating to the alleged violation of the right to life due to the mandatory imposition of the death penalty, that is, the circumstances of the offender, the lawfulness of the sentence and compliance with guarantees of due process during the trial, the only issue for it to determine was whether the mandatory imposition of the death penalty constitutes an arbitrary deprivation of the right to life.

Taking into account the established international human rights case-law providing for the criteria to apply in assessing arbitrariness of a death sentence, the Court considered whether the death sentence is provided for by law, whether the sentence was passed by a competent court and whether due process was followed in the proceedings leading to the death sentence.

In relation to the first criterion, the Court noted that the death sentence is provided for in Section 197 of the Penal Code of the United Republic of Tanzania. Regarding the second criterion, the



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Court observed that the Applicant's contention was not that the High Court lacked jurisdiction but that it could only impose the death sentence as a mandatory sentence, and thus denying the judicial officer the discretion to impose any other sentence. Therefore, the Court found no issue with regard to the imposition of the sentence by a competent court. Regarding the third criterion, the Court determined that, by taking away the discretionary power of a judicial officer to impose a sentence on the basis of proportionality and individual circumstances of a convicted person, the mandatory death sentence does not comply with the requirements of due process in criminal proceedings.

Consequently, it held that the mandatory nature of the imposition of the death penalty constitutes an arbitrary deprivation of the right to life. The Court therefore found that the Respondent State has violated Article 4 of the Charter.

Regarding the alleged violation of the right to dignity based on the imposition of the death penalty on prisoners who suffer from mental illness and intellectual disability, the Court noted that there was no evidence from the record to indicate that the medical evaluation report of the mental health status of the Applicant ordered by the High Court, was transmitted to it for consideration before it delivered its judgment on 22 April 2015. If this were the case, the report would have been referred to by the High Court in the course of the trial proceedings and in its judgment.

The Court found that, by the High Court rendering its judgment in the absence of the medical evaluation report of the Applicant's mental health status, which it had itself ordered, constituted a grave procedural irregularity that ultimately resulted in a violation of the Applicant's right to a fair trial, as guaranteed under Article 7(1) of the Charter.

On the second ground raised by the Applicant, that death by hanging is a cruel, degrading and inhuman treatment, the Court noted that the Applicant alleged both the violation of his right to life through the mandatory imposition of the death penalty and method of execution of the death penalty by hanging, which arises from his sentence. The issue of the imposition of the mandatory death penalty having already been addressed, the issue for determination therefore was whether the method of execution of the death penalty that is, hanging, constitutes cruel, inhuman or degrading treatment.



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The Court observed that regardless of the mode of execution of the sentence, the death penalty is ultimately a cruel, inhuman and degrading punishment, which amounts to torture. It recalled its jurisprudence in the Matter of *Ally Rajabu and Others v Tanzania* that the execution of the death penalty by hanging, constitutes a violation of the right to dignity under Article 5 of the Charter. The Court observed that the Applicant in the instant case faces the same penalty, therefore his right to dignity under Article 5 of the Charter was violated.

On the prayer for pecuniary reparations, after examining the record, the Court dismissed this prayer for damages for material prejudice suffered as a result of his incarceration; granted the Applicant Tanzanian Shillings Five Million (TZS 5,000,000) as fair compensation for the moral prejudice suffered due to the violations established and dismissed the Applicant's prayer for reparations for moral prejudice to the alleged indirect victims.

On non-pecuniary reparations, the Court ordered the Respondent State to re-open proceedings against the Applicant and to conclude the proceedings within one (1) year of the date of delivery of this judgment; reiterated its order to undertake all necessary measures to remove from its Penal Code, the provision for the mandatory imposition of the death sentence and ordered the publication of the Judgment on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and to ensure that the Judgment remains accessible for at least one (1) year after the date of such publication. On implementation of the judgment and reporting, the Court ordered 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 orders issued and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs, the Court ordered that each Party shall bear its own costs.

Justice Blaise TCHIKAYA issued a Declaration on the incompatibility of the death penalty with Article 4 and 5 of the Charter. Justices Ben KIOKO and Tujilane R. CHIZUMILA also issued a joint Declaration on the aspect of the non-pecuniary reparations with regard to the implementation of the judgment and reporting.

Further Information



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Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0562016>

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.