

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		

MAGWEIGA MAHIRI

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 029/2017

Case Summary

I. THE PARTIES

1. The Applicant is a Tanzanian national, who at the time of filing this Application, was serving a life imprisonment following his conviction of the offense of murder. The Applicant was initially sentenced to death by hanging but this was later commuted to life imprisonment by a Presidential Pardon.
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, through which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs (hereinafter referred to as “the Declaration”). On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.

II. SUBJECT OF THE APPLICATION

A. Facts of the Matter

3. It emerges from the record that on 20 May 1985, the Applicant killed another person, who the Applicant claims, was involved in an adulterous affair with his wife. According to the Applicant, he found the deceased sleeping with his wife in his own house and when he caught him red-handed, the deceased tried to escape in the darkness “by way of invading the Applicant’s doorway”, where he was stabbed to death.
4. After the incident, the Applicant claims that he was arraigned before the District Court of Tarime in 1988 but despite him pleading guilty for the offence of

manslaughter, the case was committed to the High Court of Tanzania on circuit at Musoma charged with the offence of murder.

5. On 28 August 1991, in Criminal Session No. 197 of 1989, the High Court convicted the Applicant of the offence of murder and sentenced him to death by hanging. Subsequently, the Applicant appealed to the Court of Appeal of Tanzania challenging both his conviction and sentence.
6. The Court of Appeal in Criminal Appeal No. 154/1991 upheld the High Court's verdict and dismissed the appeal on 29 May 1992.
7. The Applicant alleges that his case was heard by the domestic courts without considering the principle of the rule of law and against the basic standards of justice.
8. In this regard, the Applicant contends that despite his plea of guilty for manslaughter, the Respondent State relied on four prosecution witnesses to prove the charge of murder and sustain his conviction without following national and international norms applicable to the charge of murder.
9. Specifically, the Applicant asserts that the evidence adduced at the trial did not prove the charge beyond reasonable doubt as required by the fundamental evidentiary principles of criminal law. According to the Applicant, the three Prosecution Witnesses were not independent to testify and corroborate the testimony of the deceased elder brother, who testified as the first Prosecution Witness (PW 1). He avers that the second (PW 2), third (PW 3) and fourth (PW 4) witnesses had nothing important than a hearsay evidence, which is not considered reliable by the law.

B. Alleged Violations

10. The Applicant alleges that, by sentencing him to death by hanging while it was supposed to entirely abolish it (that is, the death penalty), the Respondent State has violated his right to equality and equal protection of the law, the right to life and

the right to prohibition against torture and ill-treatment, contrary to Articles 3, 4, 5 of the Charter, respectively.

11. The Applicant also contends that the Respondent State has violated Articles 7, 19 and 26 of the Charter by convicting him of the charge of murder on the basis of insufficient and unreliable evidence and its domestic courts, by failing to administer justice independently.

III. PRAYERS

12. The Applicant prays the Court to:

- i) Declare that the Application is admissible;
- ii) Declare that the decision of domestic courts of the Respondent State rendered against him violated his human rights;
- iii) Issue an order nullifying the said decision of national courts;
- iv) Order his acquittal and release from prison and ensure the full enjoyment of his rights;
- v) Make any other order that the Court finds just and equitable or award reparations in accordance with Article 27 of the Protocol to redress the violations of his rights

13. The Applicant claiming that he is incarcerated, lay and indigent, further requests the Court to provide him with legal assistance in order to facilitate his representation and effective participation in the Court's proceedings.