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JUDGMENT SUMMARY

STEPHEN JOHN RUTAKIKIRWA v. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 013/2016

JUDGMENT ON MERITS AND REPARATIONS

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

Date of Press Release: 24 March 2022

Arusha, 24 March 2022: The African Court on Human and Peoples' Rights (the Court) delivered judgment in the case of *Stephen John Rutakikirwa v. United Republic of Tanzania*.

Stephen John Rutakikirwa (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was serving a prison sentence of thirty (30) years, having been convicted of armed robbery. The Applicant alleged the violation, by the Respondent State, of his rights guaranteed under Articles 7(1)(c) and 7(1)(d) of the African Charter on Human and Peoples' Rights (the Charter) due to the failure to provide him with free legal assistance and also due to the Court of Appeal's failure to properly assess the evidence used to convict him. He also prayed for reparations to redress the alleged violations.

The Respondent State objected to the material jurisdiction of the Court on the ground that the Applicant was requesting the Court to sit as an Appellate Court.

The Court first considered the objection to its material jurisdiction and held that since the Application alleged violations of rights provided under the Charter, to which the Respondent State is a Party, then it had material jurisdiction.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined all aspects of its jurisdiction as required by its Rules. With respect to its personal jurisdiction, the Court found 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 African Charter on Human and Peoples' Rights 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 3 March 2016.



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The Court also held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol and furthermore, the alleged violations were continuing in nature; and lastly, 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.

The Court then considered whether the Application was admissible. In this regard, it considered the objection raised by the Respondent State with regard to the Applicant's failure to exhaust local remedies before filing the Application as required by Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court (the Rules). On this point, the Respondent State argued that the Applicant did not file a petition to the High Court alleging the violation of his rights as he ought to have done.

The Court rejected the Respondent State's contention, noting that the Applicant had seized the Court of Appeal, the highest judicial organ of the Respondent State. Moreover, the Court noted that the alleged violations raised, were the very basis of his appeals in the national courts. The Respondent State, therefore, had the opportunity to redress the alleged violations but failed to do so and thus the Applicant had exhausted local remedies.

The Respondent State also claimed that the Application was inadmissible because the Applicant did not file the Application within a reasonable time as required by Article 56(6) of the Charter and Rule 50(2)(f) of the Rules. In this regard, the Respondent State deemed the four (4) years and four (4) months it took for the Applicant to bring his claim to this Court as unreasonable. The Court dismissed this objection on the grounds that the Applicant was incarcerated, restricted in movement with limited access to information and was self-represented in the cases at the national courts. In light of these circumstances, the Court found that the Application was filed within a reasonable time.

The Court was also satisfied that the record showed that all other conditions of admissibility, as set out in Article 56 of the African Charter and Rule 50(2) of the Rules, had been complied with.

The Court then considered whether the Respondent State violated the Applicant's rights under Articles 7(1) and 7(1)(c) of the Charter by examining two issues.

The first issue was whether the Applicant's right to a fair trial was violated because the Court of Appeal did not consider all the evidence he adduced. The Court held that from the record, the Court of Appeal



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had considered all the evidence adduced by the Applicant and found that his appeal lacked merit. The Court, therefore, dismissed this claim.

Secondly, the Court considered whether the Applicant was denied free legal assistance as alleged. In this regard, the Court found that the Applicant had not been provided with free legal assistance, even though he was accused of a serious offence which carried a minimum heavy custodial sentence. The Court held, therefore, that the Applicant's right under Article 7(1)(c) of the Charter had been violated

The Applicant requested the Court to remedy the alleged violations by granting him reparations commensurate with the period of time he spent in prison, to be calculated based on the national annual income of an average citizen of the Respondent State. The Applicant also requested the Court to quash his conviction and sentence, and order his release. The Court rejected the Applicant's request to quash his conviction and sentence as well as order his release from prison because it had not decided that his conviction was illegally imposed. The Court however, awarded the Applicant Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as fair compensation for the moral prejudice he suffered from the denial of free legal assistance during the proceedings before domestic courts. The Respondent State was required to pay the aforementioned amount free from tax within six (6) months of the notification of the judgment and report to the Court on the implementation thereof every six (6) months until full implementation.

Each Party was ordered to bear its own costs.

Further Information

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/0132016>

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.