



**PRESS RELEASE  
JUDGMENT SUMMARY**

**JOSEPH MUKWANO V. UNITED REPUBLIC OF TANZANIA  
APPLICATION NO. 021/2016  
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 a judgment in the case of *Joseph Mukwano v. United Republic of Tanzania*.

Joseph Mukwano (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated at Butimba Central Prison in Mwanza after being convicted of murder and sentenced to death. The Applicant alleged that the Respondent State violated his rights guaranteed under Articles 2, 3(2) and 7 (1) of the African Charter on Human and Peoples' Rights (the Charter). He also prayed for reparations to redress the alleged violations.

The Respondent State objected to the material jurisdiction of the Court and the admissibility of the Application.

The Court first considered the Respondent State's objection to the material jurisdiction of the Court, based on the argument that, by considering the alleged violations, the Court would be acting as an appellate court vis-à-vis some claims, and as a court of first instance regarding some claims. The Court held that since the Application alleged violations of rights provided for in the Charter to which the Respondent State is a Party then it had material jurisdiction. The Court therefore dismissed the Respondent State's objections in this regard.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined all aspects of its jurisdiction. In terms of 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 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 5 April 2016. The Court also held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter and the Protocol, and 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 Respondent State further argued that the Applicant did not fully utilise the available local remedies and thus did not comply with Article 56(5) of the Charter.

The Respondent State argued that for this Application to fulfil the condition of exhaustion of local remedies, the Applicant should have specifically raised some issues before the Court of Appeal. These issues are, the failure of the Court of Appeal to address vital points of evidence in relation to the Applicant's conviction based on the doctrine of recent possession and admission of his retracted confession without taking into account his complaint. The Applicant stated that the Court of Appeal's alleged failure led to a breach of his rights to equality and equal protection of the law.

The Court noted that the Applicant raised a single ground of appeal before the Court of Appeal, which is that "his extra-judicial statement was not voluntary and therefore wrongly admitted and acted upon by the trial court to convict him." The Court noted that this issue was considered by the Court of Appeal, which dismissed the Applicant's appeal upon concluding that the statement was rightly admitted. The Court therefore held that it is evident that domestic remedies have been exhausted in respect of this issue, and consequently dismissed the Respondent State's objection in this regard.

The Court then determined that because the Applicant did not raise as a ground of appeal the issue of his conviction based on the doctrine of recent possession, the issue was not brought to the knowledge and assessment of the Court of Appeal, being the highest court of the Respondent State. As such, it cannot be considered that domestic remedies had been exhausted in respect thereof. This Court therefore upheld the Respondent State's objection on this point.

The Court therefore found that domestic remedies have been exhausted in this Application only in respect of the alleged failure of the Court of Appeal to consider the Applicant's views while assessing the propriety of his statement.

The Respondent State also claimed that 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. The Respondent State claimed that it took the Applicant three (3) years to file the present Application considering that the judgment of the Court of Appeal was delivered on 7 March 2013, and there was nothing that could have prevented him from filing the Application earlier. The Applicant did not dispute the period indicated by the Respondent State as being the time he took to file the Application.

The Court recalled its jurisprudence that the assessment of time in terms of compliance with Article 56(6) of the Charter is determined on a case-by-case basis and according to the specific circumstances of the Applicant. The Court considered that, the Applicant had spent the bulk of the three (3) years and twenty-eight (28) days he took before filing the Application, attempting to utilise the extra-ordinary remedy of review of the Court of Appeal's judgment; since his last such application for consideration of an extension of time to file the said review, was dismissed by that Court on 13 February 2015 for being baseless. The Court also noted that the Applicant was incarcerated and self-represented. In light of all these factors, the Court determined that the Application was filed within a reasonable time and consequently dismissed the Respondent State's objection.

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 and declared the Application partially admissible in respect of the alleged failure of the Court of Appeal to consider the Applicant's views while assessing the propriety of his statement.

The Court then considered whether the Respondent State violated the Applicant's rights under Articles 2, 3(2) and 7(1) of the Charter.

The Applicant averred that the Court of Appeal did not undertake a thorough examination of evidence that he adduced in respect of his retracted statement. According to the Applicant, his right to have his cause heard was breached when the Court of Appeal did not consider the allegation that he was subjected to torture for six (6) days prior to being taken to the "justice of the peace", who even recorded in the statement, that the Applicant had some fresh bruises.

The Respondent State rebutted these allegations and submitted that domestic law allows conviction based on such “extra-judicial statements”. The Court further observed that the Court of Appeal equally considered whether the High Court properly admitted the Applicant’s statement and that the Court of Appeal held that the High Court could not be faulted for deciding as it did. The Applicant’s claim was therefore dismissed.

Regarding the violation of right to an equal protection by the Respondent State, the Court noted that the Applicant made general statements that he was treated differently from the Prosecution during the proceedings before the Court of Appeal and he neither elaborated nor provided evidence on how his treatment breached the principle of equality. Furthermore, the Court recalled that, as earlier found, there was no evidence on file suggesting that the manner in which domestic courts conducted the proceedings amounted to a breach of the Applicant’s right to equal protection of the law. The Applicant’s claim was therefore dismissed.

The Court noted that since no violation has been established, the issue of reparation did not arise. Consequently, the Applicant’s prayers for reparation were dismissed

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/0212016>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org).

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