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JUDGMENT SUMMARY

RAJABU YUSUPH v. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 036/2017

RULING ON JURISDICTION AND ADMISSIBILITY

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 Ruling in the case of *Rajabu Yusuph v. United Republic of Tanzania*.

Rajabu Yusuph (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 sentence of life imprisonment having been convicted of the offence of rape of a six (6) year old. The Applicant alleged that the Respondent State violated his right to equality before the law and equal protection of the law, protected under Article 3(1) and (2) of the African Charter on Human and Peoples' Rights (the Charter), his right to have his cause heard, protected under Article 7(1) of the Charter, and his right to legal representation, protected under Article 10(2) of the Charter and Section 2 of the Child and Young Offenders Act Cap 13 R.E. [2002] of the Laws of the Respondent State.

On reparations, the Applicant prayed the Court to restore justice where it was overlooked, quash both the conviction and the sentence of life imprisonment imposed upon him and order his release from prison. He further prayed the Court to grant any other orders that may be appropriate in these circumstances.

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

The Respondent State's objection to the Court's material jurisdiction was three pronged, in that, it simultaneously questioned the Court's jurisdiction to grant an order for the Applicant's release as well as its jurisdiction to sit as a first instance court and its power to sit as an appellate court.

Firstly, concerning the claim that the Court does not have jurisdiction to grant an order for release, the Court noted Article 27(1) of the Protocol and concluded that it has jurisdiction to grant different types of

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reparations, including the release from prison. For this reason, the Court dismissed the objection raised by the Respondent State in this regard.

Secondly, in relation to the allegation that the Court is being invited to sit as a court of first instance, the Court reaffirmed that its jurisdiction, under Article 3 of the Protocol, extends to any application submitted to it, provided that an applicant invokes a violation of rights protected by the Charter or any other human rights instrument ratified by the Respondent State. In the instant case and in view of the allegations made by the Applicant, which all involve rights protected under the Charter, the Court found that the said allegations are within the purview of its material jurisdiction. The Court, therefore, dismissed this objection raised by the Respondent State.

Thirdly, as regards the contention that the Court would be exercising appellate jurisdiction by examining certain claims which were already determined by the Respondent State's domestic courts, the Court reiterated its position that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. At the same time, however, and even though the Court is not an appellate court vis-à-vis domestic courts, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned. In conducting the aforementioned task, the Court does not thereby become an appellate court. The Court, therefore, dismissed the Respondent State's objection and held that it has material jurisdiction.

The Court then considered whether it had temporal jurisdiction and observed that all the violations alleged by the Applicant arose after the Respondent State became a Party to the Charter and to the Protocol. Furthermore, the Court noted that the Applicant remains convicted on the basis of what he considers an unfair process. Therefore, the Court held that the alleged violations can be considered to be continuing in nature. For these reasons, the Court found that it has temporal jurisdiction to examine this Application.

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 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 8 November 2017.



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The Court also 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 the admissibility of the Application, the Court considered two objections raised by the Respondent State. The first objection related to the Applicant's alleged 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 Court recalled its position where it held that, in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.

In the instant case, 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 28 October 2009. Therefore, the Respondent State had the opportunity to address the violations alleged by the Applicant arising from the Applicant's trial and appeals.

Regarding the Respondent State's contention that the Applicant ought to have filed an application for review of the Court of Appeal's judgment, the Court noted that it previously held that such an application for review is an extraordinary remedy which applicants are not required to exhaust. The Court, therefore, found that the Applicant is deemed to have exhausted local remedies since the Court of Appeal of Tanzania, the highest judicial organ in the Respondent State, had upheld his conviction and sentence, following proceedings which allegedly violated his rights. In light of the foregoing, the Court dismissed the Respondent State's objection based on the non-exhaustion of local remedies.

On its second objection, the Respondent State claimed that the Application was not filed within a reasonable time after the local remedies were exhausted, as required under Article 56(6) of the Charter, as restated in Rule 50(2)(f) of the Rules of Court (the Rules). In this regard, the Respondent State deemed the seven (7) years, seven (7) months and ten (10) days it took for the Applicant to bring his claim to this Court as unreasonable.

In the instant case, and although the Applicant was, at the material time, incarcerated, the Court considered that he hadn't provided the Court with compelling arguments and sufficient evidence to demonstrate that his personal situation prevented him from filing the Application in a more timely manner.



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In view of the foregoing, the Court found that the filing of the Application seven (7) years, seven (7) months and ten (10) days after exhaustion of local remedies is not a reasonable time within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules. The Court therefore upheld the Respondent State's objection in this regard.

Having found that the Application had not satisfied the requirement in Rule 50(2)(f) of the Rules, the Court needed not rule on the Application's compliance with the admissibility requirements set out in Article 56(1), (2), (3), (4), and (7) of the Charter as restated in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as these conditions are cumulative.

In view of the foregoing, the Court declared the Application inadmissible, and each Party was ordered to bear its own costs.

Justice Chafika Bensaoula made a Declaration relating to the admissibility of the Application.

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/0362017>

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.