



JUDGMENT SUMMARY

MGOSI MWITA MAKUNGU V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 006/2016

JUDGMENT ON REPARATIONS

23 JUNE 2022

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

Arusha, 23 June 2022: The African Court on Human and Peoples' Rights (the Court) delivered its judgment on reparations in the case of *Mgosi Mwita Makungu v. United Republic of Tanzania*.

Mr Mgosi Mwita Makungu (the Applicant) is a Tanzanian national serving a prison term of thirty (30) years after convictions for armed robbery and robbery with violence. The Applicant alleged violations by the United Republic of Tanzania ("the Respondent State") of the right to appeal, the right to equality before the law and equal protection of the law and the right to non-discrimination as provided in Articles 7(1) (a), 3(1) and 3(2), and 2 of the African Charter of Human and Peoples' Rights (the Charter), respectively.

By a judgment delivered on 7 December 2018, the Court found that the Respondent State violated Article 7 (1) (a) of the Charter due to its failure to provide the Applicant with the certified true copies of the records of proceedings and judgments in Criminal Case No. 244 of 1995 and Criminal Case No. 278 of 1995 heard at the District Court of Bunda. This failure resulted in the Applicant not being able to appeal his convictions and sentences. By that judgment, the Court ordered the Respondent State to release the Applicant within thirty (30) days thereof. The Court also reserved its decision on the other forms of reparation and on costs, pending the exchange of pleadings on reparations.

On 16 August 2019, the Applicant filed written submissions on reparations. The Applicant claimed that, he lost income because of his imprisonment, his "farming business" collapsed and that he



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lost his house and plot of land at Bugarika area and a plot of land at Tarime area after his family was forced to sell them to secure a source of income. He argued that, “due to lack of documentary evidence, which as a result of imprisonment of over 24 years was misplaced” the Court should “consider making an award for the loss of income, which is just and commensurate in the present circumstances.”

The Applicant claimed that he suffered emotional and physical anguish during his unfair trial, and imprisonment lasting over twenty-four (24) years, his life plan was disrupted, he lost his social status, and he had limited contact with this family while in prison. The Applicant stated that he was diagnosed with tuberculosis, eye problems, ulcers, spinal cord pains and acute confusion, resulting in loss of memory. The Applicant requested the Court to award him reparations for the moral prejudice he suffered, based on the principle of equity while considering that he has spent more than twenty-four (24) years in prison. He prayed the Court to grant him a sum of Thirty Million Tanzanian Shillings (TZS 30, 000,000) for the moral prejudice he suffered as a direct victim of the violations by the Respondent State.

The Applicant also prayed the Court to consider the following members of his family as indirect victims who also suffered moral prejudice due to the violations established, that is, his two (2) wives, his six (6) children one of whom is deceased, his mother and brother. The Applicant claimed that his imprisonment disrupted the day-to-day lives of his family members as well as induced social stigma and emotional anguish on them. He claimed that his two wives have suffered emotional and financial distress without his support since he was the breadwinner of the family and that his children have missed out on the opportunity of being raised by their biological father owing to his imprisonment. In addition, the Applicant claimed that one of his sons died after his family failed to raise the money to pay for medical costs. He sought reparations in the amount of Twenty Million Tanzanian Shillings (TZS 20,000,000) for each of his two (2) wives, Five Million Tanzanian Shillings (TZS 5,000,000) for each of his six (6) children and Ten Million Tanzanian Shillings (TZS 10,000,000) each, for his mother and brother.

In addition to pecuniary reparations for loss of income and moral prejudice that the Applicant and the alleged indirect victims suffered, the Applicant prayed the Court to grant him non-pecuniary reparations. He prayed that the Court order the Respondent State to publish the judgment on reparations within three (3) months of its notification to the Parties, in both English and Swahili for

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a period of not less than one (1) year, on the official website of the Judiciary and Ministry of Constitutional Affairs. He also sought orders for the Respondent State to report to the Court, every six (6) months on measures it has taken to implement the Judgment.

The Respondent State did not make any prayers as it did not file a Response to the Applicant's submissions.

The Court first ascertained whether, in view of the failure of the Respondent State to file a Response to the Applicant's submissions on reparations, it can render a judgment in default. The Court had to determine whether the requirements set out under Rule 63 of the Rules of Court on judgments in default have been fulfilled. These conditions are: i) the notification to the defaulting party; ii) the default of one of the Parties; and iii) application by the other Party or the Court acting on its own motion.

Regarding notification to the defaulting party, the Court was satisfied that the Respondent State had been duly served with all the Applicant's pleadings. The Court also determined that the Respondent State was in default since it had failed to file the Response to the Applicant's pleadings despite service of the same to it and reminders being sent to it in this regard. On the last requirement, the Court determined that, to ensure the proper administration of justice, it would proceed of its own motion to render the judgment in default.

The Court then set out the general principles on reparation. As regards pecuniary reparations, the Court reiterated its case law establishing that, for material prejudice, there must be a causal link between the alleged violation and the prejudice suffered and that the burden of proof is on the applicant in this regard. As for moral prejudice, the Court recalled that presumptions are made in favour of the applicant and the burden of proof shifts to the Respondent State. For indirect victims of the violations established, an applicant must provide proof of spousal or familial relation for those presented as spouses, children and parents since the proof of that relationship is enough to warrant an award for reparations as they are also presumed to have suffered moral prejudice alongside the applicant. For other categories of indirect victims in addition to the filial relationship, the applicant must also provide evidence that they suffered moral prejudice.

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Turning to the Applicant's prayers, the Court first considered the claim for damages for material prejudice as a result of loss of income from the farming business and the loss of the plot of land and house at Bugarika area and loss of land at Tarime area.

Regarding the claim for loss of income, the Court noted that the Applicant's inability to appeal his convictions and sentences was a direct result of the Respondent State's violation of his rights under Article 7(1)(a) of the Charter, and this inability resulted in his prolonged imprisonment which meant that he was unable to earn an income. The Court therefore found that the requirement for the causal link between the violation established and the prejudice alleged, was met. The issue of the evidence of the loss of income then came into focus. The Court noted that the Applicant had neither specified his monthly earnings nor provided evidence of the same as he claimed that it was difficult to obtain this evidence in view of his lengthy incarceration. The Court deemed that, in view of the essentially private nature of information relating to one's income and in view of the real difficulties the Applicant faced to access the evidence required to support his claim, it would adopt a flexible approach in determining this claim. Moreover, although the Applicant had not specified his monthly earnings, the flexible approach also necessitated the Court to adopt the applicable monthly minimum wage as the basis for the computation of the income lost. The applicable monthly minimum wage as at April 1996, set out in the applicable Respondent State's Regulations when the Applicant first filed the notice of intention to Appeal his convictions and sentences, was Tanzanian Shillings Seventeen Thousand Five Hundred (TZS 17,500).

The Court then determined that the period to be used for computation is from 16 April 1996 when the Applicant first notified the Respondent State of his intention to appeal his convictions and sentences until 7 December 2018 when this Court established in the judgment on merits, that the Respondent State had violated his rights. This was a period of twenty-two (22) years, seven (7) months and twenty-two (22) days), that is, 22.67 years or two hundred and seventy-two (272) months. The Court then determined that, an amount for work not done during rest days would have to be deducted from the total computation, based on one day of rest per week which computes to fifty- two days of rest or one and seven tenth (1.7) months a year. This was rounded off to two (2) months per year and multiplied by 22.67 years, that is, 22.67 years x 2 months per year amounting to 45.3 months. The total of 45.3 months was then deducted from the two hundred- and seventy-two-months period, that is, $272 - 45.3 = 226.7$ months. The Court also factored in adjustments in cost of living that occurred during this period, and for this purpose it applied the annual inflation rate

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of 3.8 % (or $3.8\%/12 = 0.32\%$ per month) as established by the Bank of Tanzania.

Therefore, the computation for the income lost was based on the period of 226.7 months multiplied by 17,500 TZS compounded with a monthly inflation rate of 0.32 %, that is, $226.7 \times 17,500 \text{ TZS} \times 0.32\% = 5,807,421 \text{ TZS}$. The Court therefore awarded the Applicant, in equity, the amount of Tanzanian Shillings Five Million Eight Hundred and Seven Thousand and Four Hundred and Twenty-One only (TZS 5,807,421) as damages for material prejudice suffered for loss of income.

Regarding the alleged sale of the house and the plot of land at Bugarika and the plot of land at Tarime, the Court determined that these sales could not directly be linked to the Applicant's continued incarceration as they could have been for reasons other than his imprisonment. Furthermore, the Applicant's relatives would have been able to provide additional evidence of the said sales, such as certifications by local authorities in which the said lands and house are situated, providing their specifications and value and attesting to his ownership of the properties and relating to their sale. In view of these shortcomings, the Court dismissed this prayer relating to material prejudice suffered due to the sale of the Applicant's house and plots of land.

The Court determined that the Applicant's inability to exercise his right to appeal and in view of the long prison term he faced, had undoubtedly caused him distress and psychological anguish on account of which he suffered great moral prejudice. This suffering was aggravated by the Respondent State's failure to implement this Court's judgment on merits to release the Applicant and facilitate him to exercise his right to appeal and report on the measures taken in that regard. The Court determined that in these circumstances, the Applicant is entitled to moral damages. In view of this, and exercising its discretion in equity, the Court awarded the Applicant the amount of Tanzanian Shillings Thirty Million (TZS 30, 000,000), as fair compensation for the moral prejudice he suffered.

On the claim for reparations for moral prejudice allegedly suffered as a result of presbyopia, tuberculosis, ulcers, spinal cord pains and delirium the Court determined that the Applicant had failed to establish that these ailments were directly linked to the violations established and not to other causes. Furthermore, the documents he submitted in support of this claim were incomplete and unclear. The Court therefore dismissed this prayer.



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The Court then examined if the alleged indirect victims, his wives, six (6) children, mother and brother were entitled to reparations. The Court noted that, the Applicant had tendered an affidavit regarding the claims by the indirect victims essentially restating to his claims in the submissions on reparations. The Applicant tendered no other evidence to prove the spousal or filial relationship between him and the alleged indirect victims and specifically for his brother, that he did suffer the moral prejudice as alleged. In view of this lack of evidence, the Court dismissed the Applicant's prayer for reparations to the alleged indirect victims.

On measures of satisfaction, the Court considered that in view of the nature of the violations established, the Respondent State's lack of implementation of the Judgment on merits and the need to publicise its obligations and the reparations to be made to the Applicant, to as wide an audience as possible, it granted the Applicant's prayers for publication of the judgment on reparations. Since Kiswahili is the Respondent State's national language, the Court ordered the publication of the judgment on reparations in English and Kiswahili on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs and for this judgment to remain accessible for a year, after such publication. The Court also granted the order that the Respondent State report to the Court, every six (6) months on the measures taken to implement this judgment on reparations.

The Respondent State was required to pay the Applicant the amounts ordered, 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/0062016>

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



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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.