

<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**THE MATTER**

**OF**

**MGOSI MWITA MAKUNGU**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION No. 006/2016**

**JUDGMENT  
(REPARATIONS)**

**23 JUNE 2022**



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**The Court composed of:** Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO - Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights ("the Protocol") and Rule 9(2) of the Rules of Court ("the Rules")<sup>1</sup>, Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of

Mr Mgesi Mwita MAKUNGU

Represented by:

Mr Donald DEYA, Chief Executive Officer, Pan African Lawyers Union (PALU)

Versus

UNITED REPUBLIC OF TANZANIA

Mr. Gabriel P. MALATA, Solicitor General, Office of Solicitor General.

*after deliberation,*

*renders the following Judgment:*

## **I. BRIEF BACKGROUND OF THE MATTER**

1. In his Application filed on 29 January 2016, Mgesi Mwita Makungu ("the Applicant") alleged that the United Republic of Tanzania ("the Respondent State") had violated his right to non-discrimination, right to equal protection

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<sup>1</sup> Rule 8(2) of the Rules of Procedure, 2 June 2010.

before the law and right to fair trial under Articles 2, 3 and 7 of the African Charter on Human and Peoples' Rights ("the Charter"). The claims arose from the Respondent State's alleged failure to provide the Applicant with certified true copies of the record of proceedings and judgments of the local courts which rendered his conviction for robbery with violence and armed robbery and a cumulative sentence of thirty (30) years' imprisonment.

2. On 7 December 2018, the Court rendered its judgment, of which paragraphs (vi)-(xi) reads as follows:

- vi. *Finds* that the Respondent State violated Article 7 (1) (a) of the Charter as regards the 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, to facilitate the Applicant file the appeals therefrom and therefore orders the Respondent State to provide them to the Applicant;
- vii. *Orders* the Respondent State to release the Applicant from prison within thirty (30) days of this Judgment;
- viii. *Reserves* its decision on the Applicant's prayer on the other forms of reparation;
- ix. *Allows* the Applicant, in accordance with Rule 63 of its Rules, to file his written submissions on the other forms of reparation within sixty (60) days from the date of notification of this Judgment; and the Respondent State to file its Response thereto within thirty (30) days from the date of receipt of the Applicant's written submissions;
- x. *Orders* the Respondent State to submit to the Court a report on the measures taken in respect of paragraphs (vi) and (vii) above within sixty (60) days of notification of this Judgment; and
- xi. *Reserves* its decision on costs.

## **II. SUBJECT OF THE APPLICATION**

3. On 16 August 2019, the Applicant filed his written submissions, praying the Court to award him reparations based on its findings in the judgment on the merits as mentioned above.

### III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

4. On 10 December 2018, the Registry transmitted to the Parties, a certified true copy of the judgment on merits.
5. On 15 February 2019, the Court granted the Applicant, *suo motu*, a thirty (30) day extension of time to file his written submissions on reparations as time had elapsed since the notification of the judgment to the Parties.
6. On 16 August 2019, the Applicant filed his submissions on reparations after being granted two (2) further sixty (60) day extensions of time to file the said submissions. On the same date, the Applicant requested the Court for an extension of time to file evidence to support the claims in respect of the alleged indirect victims. On 4 October 2019, the Applicant was notified that the Court had granted his request for extension of time to file additional evidence. The Applicant did not file the evidence.
7. The Applicant's submissions on reparations were served on the Respondent State on 27 January 2020. The Respondent State did not file a Response to these submissions. The time for doing so first elapsed on 28 February 2020. On 1 December 2020, the Respondent State was sent a reminder about the pending Response.
8. On 1 April 2022, the Parties were notified that, pursuant to Rule 63(1) of the Rules, the Respondent State was required to file a Response to the submissions on reparations within forty-five (45) days from the date of receipt of the notice, failing which, the Court would enter a judgment in default.
9. Although the Respondent State received all these notifications, it did not respond to any of them.
10. Pleadings were closed on 20 May 2022 and the Parties were duly notified.

#### **IV. PRAYERS OF THE PARTIES**

11. The Applicant prays the Court to grant the following reparations:

- i. TZS 30,000,000 (Thirty Million Tanzanian Shillings) to the Applicant for moral prejudice;
- ii. TZS 20,000,000 (Twenty Million Tanzanian Shillings) payable to each of his two wives, Mrs Ghati Mgesi and Mrs Nyangi Bageni for moral prejudice;
- iii. TZS 10,000,000 (Ten Million Tanzanian Shillings) to his mother, Nyakibari Momanyi for moral prejudice;
- iv. TZS 10,000,000 (Ten Million Tanzanian Shillings) to his brother for moral prejudice;
- v. TZS 5,000,000 (Five Million Tanzanian Shillings) to each of his children for moral prejudice;
- vi. An order that the above-mentioned amounts are paid tax free within three (3) months of notification of judgment on reparations;
- vii. An amount to be determined by this Honourable Court which it considers just to Mgesi Mwita Makungu for the material prejudice suffered;
- viii. An Order that the Respondent reports to this Honourable Court within six (6) months of the date of notification of the Reparations Judgment and every six (6) months thereafter, until such a time all orders have been complied with;
- ix. An Order that the Respondent publishes the judgment on Reparations within three (3) months of notification in both English and Swahili for a period of not less than one year, on the official website of the Judiciary and Ministry of Constitutional Affairs.

12. The Respondent State did not respond to the Applicant's submissions.

#### **V. ON THE DEFAULT OF THE RESPONDENT STATE**

13. Rule 63(1) provides that:

Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter a decision in default after it has

satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

14. The Court notes that Rule 63(1) of the Rules sets out three conditions for a judgment in default and these 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.
15. With regard to notification, the Court recalls that the Applicant's written submissions on reparations were filed on 16 August 2019. The Court further notes that from 27 January 2020, being the date of service of the Applicant's submissions on the Respondent State, to 20 May 2022, when pleadings were closed, the Registry notified the Respondent State of all the pleadings filed by the Applicant. The Court concludes that the Respondent State was duly notified.
16. On the default of one of the Parties, the Court notes that, in the notice of service of the Application, it requested the Respondent State to file its Response thereto within thirty (30) days of receipt. The Respondent State failed to file its submissions within the time provided even after further notifications on 3 December 2020 and on 1 April 2022. The Court, therefore, finds that the Respondent State has failed to defend its case within the prescribed time.
17. Finally, with respect to the third condition, the Court notes that the Rules, empower it to issue a decision in default either *suo motu* or on the request of the other Party. In the present case, the Applicant having not requested for a default decision, the Court will proceed to issue the decision *suo motu* for proper administration of justice.<sup>2</sup>

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<sup>2</sup> *African Commission on Human and Peoples' Rights v. Libya* (merits) (2016) 1 AfCLR 153 §§ 38-42; *Fidele Mulindahabi v. Rwanda*, ACtHPR, Application No. 010/2017, Ruling of 26 June 2020 (jurisdiction and admissibility) § 30. *Yusuph Said v. United Republic of Tanzania*, ACtHPR, Application No. 011/2019, Ruling of 21 September 2021 (jurisdiction and admissibility) §§ 17; *Robert Richard v. United Republic of Tanzania*, ACtHPR, Application No. 035/2016 Judgment of 2 December 2021 (merits and reparations) §§ 17 -18.

18. The required conditions having thus been fulfilled, the Court enters this judgment by default.

## VI. REPARATIONS

19. In his submissions the Applicant prays the Court to grant him reparations for material and moral prejudice due to the violation of his rights by the Respondent State.

20. Article 27(1) of the Protocol stipulates that:

If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

21. As it has consistently held, the Court considers that, for reparations to be granted, the Respondent State should first be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where it is granted, reparation should cover the full damage suffered.<sup>3</sup>

22. The Court reiterates that the onus is on the Applicant to provide evidence to justify his prayers, particularly for material damages.<sup>4</sup> With regard to moral damages, the Court has held that it is presumed that there is prejudice caused when violations are established.<sup>5</sup>

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<sup>3</sup> *The Beneficiaries of the late Norbert Zongo Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258 §§ 20 to 31; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346 §§ 52 to 59; and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72 §§ 27 to 29 and 40.

<sup>4</sup> *Kennedy Gihana and others v Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655 § 139; See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations) § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) § 15(d); and *Kalebi Elisamehe v. Tanzania* (merits and reparations) § 97.

<sup>5</sup> *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018), 2 AfCLR 477, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55; and *Kalebi*

23. The Court also restates that measures that a State could take to remedy a violation of human rights include restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.<sup>6</sup>

24. In the instant case, the Court established that the Respondent State violated the Applicant's right to a fair trial under Article 7(1) (a) of the Charter by failing to provide him with certified true copies of the record 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 for over twenty-two (22) years. By these judgments, he was convicted of the offence of armed robbery and robbery with violence, respectively, and sentenced to fifteen (15) years imprisonment for each conviction.

25. It is against these findings and principles that the Court will consider the Applicant's prayers for reparations.

#### **A. Pecuniary reparations**

26. The Applicant seeks reparations for material and moral prejudice that he suffered and for moral prejudice suffered by the alleged indirect victims. .

##### **i. Material prejudice**

27. The Applicant claims that, because of his imprisonment, his "farming business" collapsed. Further, the Applicant claims that he 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. The Applicant swore an affidavit on 3 July 2019, which he filed before the Court on 16 August 2019, by which he restated these claims.<sup>7</sup>

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*Elisamehe v. Tanzania* (merits and reparations), § 97.

<sup>6</sup> *Ingabire Victoire Umuhzo v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202 § 20. See also *Kalebi Elisamehe v. United Republic of Tanzania*, ACTHPR, Application 028/2015, Judgment of 26 June 2020 (merits and reparations) § 96.

<sup>7</sup> The affidavit reads:

28. The Applicant implores the Court that “due to lack of documentary evidence, which as a result of imprisonment of over 24 years was misplaced” to “consider making an award for the loss of income, which is just and commensurate in the present circumstances.”

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29. The Court notes that, for reparations for material prejudice to be granted, there must be a causal link between the violation established by the Court and the prejudice caused, and there should be a specification of the nature of the prejudice and proof thereof.<sup>8</sup>

30. In the instant Application, the Court established that the Applicant’s right to fair trial under Article 7(1)(a) of the Charter was violated as he was unable to appeal his conviction and sentence for twenty-two (22) years, seven (7) months and twenty-two (22) days, or two hundred and seventy-two (272) months as at the date of this Court’s judgment on merits rendered on 7 December 2018. The Applicant’s inability to appeal his conviction and sentence resulted in his continued imprisonment and serving over two thirds of his sentence without exercising his right of appeal. This situation directly led to his inability to earn an income.

31. The Court notes that, the Applicant has prayed for flexibility due to difficulty of obtaining documentation to support his claim that he managed a farming business and earned an income from it. His prayer is based on the fact a long time that has elapsed since his incarceration.

32. The Court notes that the Applicant has neither provided information on the

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18. THAT, I was a successful farmer before I got arrested and imprisoned;

19. THAT, I did not get the opportunity to handover my business and make the necessary arrangements regarding my personal and family affairs before my arrest;

20. THAT, as a result of my imprisonment and prolonged absence, my farming business collapsed;

21. THAT, I lost my house and plot of land both located at Bugarika area, within Mwanza City and another plot of land at Tarime area after my family was forced to sell them as a source of income.

<sup>8</sup> *Kijiji Isiaga v. United Republic of Tanzania*, ACtHPR, Application No. 032/2015, Judgment of 25 June 2021 (reparations) § 20.

nature of the farming business that he managed nor specified the monthly income he earned. The Court also notes that documents required as evidence of the Applicant's actual or estimated income would essentially be of a private or confidential nature. Such documents would therefore be available or accessible only to the Applicant and not to third parties. The Applicant's situation, being incarcerated, means that there would be a real difficulty to access the said documents which are of a private or confidential nature. In view of this, the Court deems it fit to adopt a flexible approach.

33. The flexible approach necessitates the use of an acceptable basis for the assessment of the lost earnings. Since the Applicant asserts that he earned his income from the farming sector without any specifications, the Court deems that the use of the minimum applicable monthly wage during that period is an acceptable standard for assessment of the quantum of damages. The Court notes that the applicable minimum monthly wage for the period was Tanzanian Shillings Seventeen Thousand, Five Hundred (TZS 17,500 ).<sup>9</sup>

34. 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 is 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 notes that, the Applicant would not have worked throughout the year as there would be a period of rest. On average there would be one day of rest per week which translates to fifty-two (52) days of rest or one and seven tenth (1.7) months a year for the rest period. This can be rounded off to two (2) months per year to be 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 will be deducted from the two hundred-and seventy-two-months period that is,  $272 - 45.3 = 226.7$  months.

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<sup>9</sup> See Schedule Part A of Government Notice Number 85 published on 30 April 1996 'Regulation of Wages and Terms of Employment Order 1996', issued under Section 10(3C) of the Regulation of Wages and Terms of Employment Ordinance, Cap 300.

35. The Court also notes that, it is necessary to factor in adjustments in cost of living that occurred during the intervening period, and for this purpose an annual inflation rate of 3.8 % (or  $3.8\%/12 = 0.32\%$  per month) <sup>10</sup> will be applied. The Court deems it appropriate to apply the rate of inflation for adjustments in costs of living because it is of general application as opposed to, for instance, interest rate, which is varies depending on amounts and durations involved.

36. Therefore, the computation for the income lost will be 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 awards 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.

37. Regarding the alleged sale of the house at Bugarika and the plot of land at Tarime, these sales are not directly linked to the Applicant's continued incarceration as they could have been sold for reasons other than his imprisonment. Furthermore, the Court notes that, in addition to his affidavit, the Applicant's relatives would have able to provide evidence 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.

38. The Court therefore dismisses this prayer relating to material prejudice allegedly suffered due to the sale of the Applicant's house and plots of land.

## **ii. Moral prejudice**

39. The Applicant prays the Court to grant him reparations for the moral prejudice

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<sup>10</sup> See the annual inflation rate as indicated by the Bank of Tanzania as at April 2022 available on <https://www.bot.go.tz/#>; The inflation rate is usually constant for long periods of time as would be applicable for the period under consideration.

he suffered and for the moral prejudice allegedly suffered by his wives, children, mother and brother.

**a. Moral prejudice suffered by the Applicant**

40. The Applicant claims that he is a direct victim of the violation of Article 7(1)(a) of the Charter as acknowledged in the judgment on merits dated 7 December 2018. Specifically, the Applicant claims 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 has had limited contact with this family while in prison.

41. Further, the Applicant tenders before the Court medical documents to demonstrate that his health deteriorated due to his imprisonment. The Applicant claims that he “was diagnosed with tuberculosis, eye problems, ulcers, spinal cord pains, acute confusion resulting in loss of memory (retrograde amnesia/delirium).”

42. The Applicant requests the Court to award him reparations for moral prejudice based on the principle of equity while considering the time he has spent in jail, that is, more than twenty-four (24) years. He cites the decision of the Court in the *Lohe Issa Konaté* case where the Applicant and his family were awarded twenty thousand dollars (USD 20,000) in moral damages endured as a result of the Applicant’s imprisonment for a one-year period.

43. In light of the above, the Applicant prays the Court to grant him a sum of Thirty Million Tanzanian Shillings (TZS 30, 000,000) for moral prejudice as a direct victim.

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44. The Court recalls its established case-law where it has held that moral prejudice is presumed in cases of human rights violations, and the quantum of damages in this respect is assessed based on equity, taking into account the

circumstances of the case.<sup>11</sup> The Court has, thus, adopted the practice of granting a lump sum in such instances.<sup>12</sup>

45. As indicated in paragraph 2 of this judgment, the Court notes that the Respondent State violated the Applicant's right to appeal his convictions and sentences for armed robbery and robbery with violence issued vide the judgments in Criminal Case No.244 of 1995 of 18 June 1996 and Criminal Case No.278 of 1995 of 15 April 1996, respectively, both by the District Court of Bunda.

46. The Court further notes that, the Applicant indicated his intention to appeal the convictions and sentencing in both cases, by filing notices of appeal on 16 April 1996 with respect to Criminal Case No.278 of 1995 and on 22 June 1996 with respect to Criminal Case No. 244 of 1995, within the time prescribed by law.

47. It is pertinent that, the Applicant was unable to exercise his right to appeal during the period running from 16 April 1996, to 7 December 2018, when the judgment on merits was rendered, this being (22) years, seven (7) months and twenty-two (22) days.

48. Furthermore, the time for the Respondent State to report on measures taken to facilitate the Applicant to exercise his right of appeal as ordered, elapsed on 17 February 2019. The Respondent State also ought to have released the Applicant no later than 8 January 2019. By his letter dated 26 July 2019, the Applicant informed the Court that the Respondent State is yet to implement the Judgment on merits. The Respondent State did not submit any observations regarding the Applicant's letter, after it was notified of the same, therefore it is deemed to have accepted the Applicant's contentions.

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<sup>11</sup> *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55; *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 59; *Christopher Jonas v. Tanzania* (reparations), § 23.

<sup>12</sup> *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 119; *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 84-85; *Armand Guehi v. Tanzania* (merits and reparations) § 177; *Christopher Jonas v. United Republic of Tanzania* (reparations), § 24.

49. The Applicant's inability to exercise his right to appeal and in view of the long prison term he faced undoubtedly caused him distress and psychological anguish on account of which he suffered great moral prejudice. This suffering is aggravated by the Respondent State's failure to implement this Court's judgment on merits and report on the measures taken in that regard. Accordingly, the Applicant is entitled to moral damages.
50. The Court notes that the *Konaté* standard referred to by the Applicant is distinguishable from his case due to the difference in the nature of the offences that were implicated. The Court will therefore not fully apply that standard in assessing the quantum of reparation for moral prejudice to be awarded to the Applicant.
51. In view of the moral prejudice suffered by the Applicant due to his inability to exercise his right to appeal his conviction and sentence for a prolonged period, resulting in him serving more than two-thirds of his thirty (30) year prison sentence without exercising this right, the Court awards the Applicant the sum of Thirty Million Tanzanian Shillings (TZS 30,000,000) as fair compensation for the moral prejudice suffered.
52. The Court further notes that, based on the medical documents that the Applicant submitted on 11 June 2015, the Applicant was diagnosed with presbyopia. This condition relates to a gradual-age-related loss of the eyes' ability to focus actively on nearby objects. In view of the nature of this condition, which occurs due to advancement in age, there ought to have been evidence provided indicating that the Applicant's condition was as a direct consequence of the violation established yet the Applicant failed to provide such evidence. Therefore, the claim based on this ground is dismissed.
53. As regards the claim of tuberculosis, ulcers, spinal cord pains and delirium, the Court notes that the medical documents provided are incomplete and unclear to support these allegations. Furthermore, like the claim relating to the diagnosis of presbyopia, the Court requires evidence proving that these ailments were a direct consequence of the violations established. Without the

said evidence, this claim is also dismissed.

**b. Moral prejudice suffered by the alleged indirect victims**

54. The Applicant prays the Court to consider the indirect victims, who have also suffered moral prejudice due to the violations against him, as follows:

- i. An amount of Twenty Million Tanzanian Shillings (TZS 20,000,000) payable to each of his two wives, Mrs Ghati Sandarya Mgosi and Mrs Nyangi Bageni
- ii. Five Million Tanzanian Shillings (TZS 5,000,000) to each of his children: Matinde Mgosi; Joel Mgosi; Geoffrey Mgosi; Josephat Mgosi (now late); Julius Mgosi; and Momanyi Mgosi
- iii. Ten Million Tanzanian Shillings (TZS 10,000,000) payable to his brother, Charles Samuel
- iv. Ten Million Tanzanian Shillings (TZS 10,000,000) payable to his mother, Nyakibari Momanyi

55. The Applicant claims 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 claims that his two (2) wives have suffered emotional and financial distress without his support since he was the breadwinner of the family. His children have missed out on the opportunity of being raised by their biological father owing to the Applicant's imprisonment. In addition, the Applicant claims that one of his sons died after his family failed to raise the money to pay for medical costs.

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56. The Court notes that with regard to indirect victims, as a general rule, moral prejudice is presumed with respect to spouses, parents and children and reparation is granted only when there is evidence of the relation between spouses or the filiation with an applicant. For other categories of indirect victims, proof of filiation and moral prejudice suffered is required.<sup>13</sup>

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<sup>13</sup> *Norbert Zongo and Others v. Burkina Faso* (reparations), § 54; and *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 135; *Léon Mugesera v. Rwanda*, ACtHPR, Application No. 012/2017, Judgment of 27 November 2020 (merits and reparations), § 148.

57. In the present case, the Applicant's affidavit dated 3 July 2019 and filed before the Court on 16 August 2019 has been tendered as proof of filiation with the alleged indirect victims as follows:

2. THAT, I have two wives namely Ghati Sandarya Mgesi and Nyangi Bageni
3. THAT, some of my children were very young at the time of my incarceration, in particular
  - a. Matinde Mgesi (female), was 8 years at the time of my imprisonment
  - b. Joel Mgesi (male), was 6 years old at the time of my imprisonment
  - c. Geoffrey Mgesi (male), was 6 years old at the time of my imprisonment
  - d. Josephat Mgesi (male but now late) was 6 years old at the time of my imprisonment
  - e. Julius Mgesi (male), was 3 years old at the time of my imprisonment
  - f. Momanyi Mgesi (male), was 8 months in the womb of Nganyi Bageni
4. THAT, I am the son of Nyakibari Momanyi
5. THAT, I have a younger brother named Charles Samuel

58. The Applicant's affidavit further elaborates on the effect of the violation he suffered on the members of his family. The Applicant claims that his family as a whole "has suffered emotional anguish and the social stigma of having the Applicant arrested, tried, convicted and imprisoned." Furthermore, the Applicant claims:

26. THAT, my two wives, Ghati Sandarya and Nyangi Bageni have suffered significant emotional and financial distress following my conviction and incarceration. They have been taking care of my six children without their life partner and breadwinner of the family.
28. THAT, due to my imprisonment my children have missed on the opportunity and experience of being raised by their biological father...

29. THAT, my father died of high blood pressure when I was arrested and my son died after my family failed to cover his medical cost.

59. The Court notes that even after granting the Applicant his request for extension of time to file additional evidence in support of the claims for reparations for the alleged indirect victims, the Applicant did not do so within the prescribed time. Therefore, the Applicant's affidavit is the only evidence tendered to establish the Applicant's filiation with the alleged indirect victims. This is not enough for purposes of establishing that there was a spousal relationship or filiation between the Applicant and the alleged indirect victims.

60. The Court reiterates its jurisprudence that indirect victims must prove their relation to the Applicant to be entitled to damages. Hence, spouses should adduce their marriage certificate or any other equivalent proof, children should adduce their birth certificate or any other equivalent evidence to show proof of their filiation, and fathers and mothers should adduce only an attestation of paternity or maternity or any other equivalent proof.<sup>14</sup>

61. In view of the lack of supporting documentation proving the Applicant's filiation to the persons he presents as his spouses, children and parents, their claims for reparations for moral prejudice cannot be sustained.

62. With regard to the claims of moral prejudice suffered by his younger brother, in addition to the lack of supporting evidence on his filiation to the Applicant, no evidence was provided to demonstrate that his living and social conditions were adversely affected as a result of the violations against the Applicant.

63. Consequently, the Court dismisses this prayer for reparations to the alleged indirect victims.

## **B. Non-pecuniary reparations**

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<sup>14</sup> *Norbert Zongo and Others v. Burkina Faso* (reparations), § 54.

64. The Applicant seeks non-pecuniary reparations in the form of publication of this judgment and periodic reporting by the Respondent State on its implementation.

**i. Measures of satisfaction**

65. The Applicant prays the Court to order “that the Respondent publishes the Judgment on Reparations within three (3) months of notification in both English and Swahili for a period of not less than one year, on the official website of the Judiciary and Ministry of Constitutional Affairs.”

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66. The Court recalls that, as per its case-law, its judgment can constitute sufficient reparation for any given violation especially when it comes to moral prejudice. Therefore, orders such as publication of a decision are made on a case-by-case basis as the circumstances warrant.<sup>15</sup> Such circumstances would include cases of grave or systemic violations that affect the domestic system of the Respondent State, where the Respondent State has not implemented a previous order of this Court in relation to the same case, or where there is need to enhance public awareness of the findings in the case.<sup>16</sup>

67. The Court notes that in the judgment on the merits of this Application, the Respondent State was ordered to release the Applicant within thirty (30) days of notification of the judgment and to provide the Applicant with the certified true copies of the records of proceedings and judgments in the two criminal cases, and report within sixty (60) days of such notification on measures taken to comply with these orders. The Respondent State has not filed any such report despite several reminders and despite the Applicant’s request for compliance

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<sup>15</sup> *Reverend Christopher R. Mtikila v. Tanzania* (reparations), § 45; *Ally Rajabu and Others v. Tanzania* (merits and reparations), §§ 151-153; *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations) §§ 173-174; and *Amir Ramadhani v. United Republic of Tanzania*, ACtHPR, Application No. 010/2015, Judgment of 25 June 2021 (reparations) § 49.

<sup>16</sup> *Armand Guehi v. Tanzania* (merits and reparations), § 191. See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations), § 45; *Norbert Zongo and Others v. Burkina Faso* (reparations), §§ 103-106; and *Amir Ramadhani v Tanzania* (reparations) § 49.

with these orders, particularly to release him from prison.

68. The Court recalls its jurisprudence, in the *Zongo*,<sup>17</sup> *Mtikila*<sup>18</sup> and *Anudo*<sup>19</sup> cases, in which it noted that the publication of judgments of international human rights courts as a measure of satisfaction was common practice.

69. The Court notes that, in view of the nature of the violation and the Respondent State's non-compliance with the judgment on merits, there is a need to emphasise on, and raise awareness on the Respondent State's obligations and the reparations required. In view of these circumstances, the Court deems it necessary for this judgment on reparations to be published.

70. The Court further notes that Kiswahili is the Respondent State's national and official language. The publication of this judgment on reparations in Kiswahili will ensure that it is publicised to as wide an audience as possible. The prayer for this judgment on reparations to be published in English and Kiswahili is therefore granted.

## ii. Report on implementation

71. The Applicant prays the Court that "the Respondent reports to this Honourable Court within 6 months of the date of notification of the Reparations Judgment and every six (6) months thereafter, until such a time all orders have been complied with".

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72. The Court restates its previous decisions that orders on reporting on the implementation of its decisions have become inherent in its processes as prescribed under Article 30 of the Protocol.<sup>20</sup>

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<sup>17</sup> *Norbert Zongo and Others v. Burkina Faso* (reparations), § 98.

<sup>18</sup> *Reverend Christopher R. Mtikila v. Tanzania* (reparations), § 45.

<sup>19</sup> *Anudo Ochieng Anudo v. United Republic of Tanzania*, ACtHPR, Application No. 012/2015, Judgment of 2 December 2021 (reparations) § 95.

<sup>20</sup> See *Wilfred Onyango Nganyi and 9 Others v. Tanzania* (reparations), § 83; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania*, ACtHPR, Application No. 006/2015, Judgment of 8 May 2020 (reparations) § 62; *Kalebi Elisamehe v. Tanzania* (merits and reparations), §

73. In view of this, therefore, the Court deems it necessary to order the Respondent State to periodically report on the implementation of this judgment in accordance with Article 30 of the Protocol.

## VII. COSTS

74. Rule 32(2) of the Rules<sup>21</sup> stipulates that, “Unless otherwise decided by the Court, each party shall bear its own costs, if any”.

75. In the instant Application, the Applicant did not make submissions on costs.

76. Therefore, considering the circumstances of this case, the Court decides that each party should bear its own costs.

## VIII. OPERATIVE PART

77. For these reasons,

THE COURT

Unanimously,

*On pecuniary reparations*

- i. *Dismisses* the Applicant’s prayer for moral prejudice suffered by the alleged indirect victims
- ii. *Grants* the Applicant’s prayer for material prejudice and awards him the sum of Five Million Eight Hundred and Seven Thousand and Four Hundred and Twenty-One Tanzanian Shillings (TZS

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117(xvi).

<sup>21</sup> Rule 30(2) of the Rules of Court, 2 June 2010.

5,807,421)

- iii. *Grants* the Applicant's prayer with regard to moral prejudice and awards him the sum of Thirty Million Tanzanian Shillings (TZS 30,000,000).
- iv. *Orders* the Respondent State to pay the amounts indicated under sub-paragraphs (ii) and (iii) tax free as fair compensation, within six (6) months from the date of notification of judgment, failure of which, it will be required to pay interest on arrears calculated on the basis of the applicable rate of the Bank of Tanzania throughout the period of delayed payment until the accrued amount is fully paid.

*On non-pecuniary reparations*

- v. *Orders* the Respondent State to publish this Judgment in English and Kiswahili, on the website of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that it remains accessible for at least one (1) year after the date of the publication.

*On implementation and reporting*

- vi. *Orders* the Respondent state to submit to it within six (6) months from the date of notification of this Judgment, a report on the status of implementation of the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

*On Costs*

- vii. *Orders* each Party to bear its own costs.

**Signed:**

Blaise TCHIKAYA, Vice-President;



Ben KIOKO, Judge;



Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

M-Thérèse MUKAMULISA, Judge; 

Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Modibo SACKO, Judge; 

and Robert ENO, Registrar. 

Done at Arusha, this Twenty-Third Day of June in the Year Two Thousand and Twenty-Two in English and French the English text being authoritative.

