



JUDGMENT SUMMARY

CLEOPHAS MAHERI MOTIBA V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 055/2016

JUDGMENT ON MERITS AND REPARATIONS

22 SEPTEMBER 2022

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

Arusha, 22 September 2022: The African Court on Human and Peoples' Rights (the Court), delivered a judgment in the case of *Cleophas Maheri Motiba v. United Republic of Tanzania*.

Mr. Cleophas Maheri Motiba (the Applicant) is a national of the United Republic of Tanzania (the Respondent State) and a former employee of the Ministry of Finance in the Respondent State. The Applicant alleged that the Respondent State violated his right to work guaranteed under Article 15 of the African Charter on Human and Peoples' Rights (the Charter), his right to fair trial under Article 7 of the Charter, his right to equality before the law and equal protection of the law under Article 3(1) and 3(2), respectively of the Charter, and his right to freedom from discrimination under Article 2 of the Charter. The Applicant sought reparations to redress the alleged violations.

On jurisdiction, the Respondent State raised an objection to the Court's material jurisdiction on two (2) grounds namely: that the Court would be sitting as a court of first instance and as a court of appeal, should it adjudicate over matters already finalised by the Court of Appeal, the highest judicial organ in the Respondent State. Having considered the objection on the two (2) grounds, the Court held that it has material jurisdiction to consider the Application given that the alleged violations were of rights provided for in the Charter to which the Respondent State is a Party.

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 Rule 49(1) of the Rules of Court (Rules). The Court held that it had personal jurisdiction since 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 before the Court as per Article 5(3) of the Protocol. Further, the Court

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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 filed at the Court on 3 March 2016. The Court also held that it had temporal jurisdiction because the alleged violations were continuing in nature. Lastly, the Court found 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 admissibility, the Respondent State raised two objections relating to (i) the requirement on exhaustion of local remedies and (ii) the requirement on filing of the Application within a reasonable time.

Regarding the exhaustion of local remedies, the Respondent State argued that although the Applicant approached the highest judicial organ in the Respondent State, there was no evidence to show that during the domestic proceedings, the Applicant raised the alleged violation of his right to equality before the law and non-discrimination by way of a constitutional petition at the High Court. The Court dismissed the objection having considered that during the stated domestic proceedings, the Respondent State had the opportunity to address the possible human rights impacted directly by the realisation of the right to work, including equality before the law and freedom from non-discrimination, but did not do so. Further, the Court noted that the filing of a constitutional petition before the Respondent State's High Court was an extraordinary remedy, which the Applicant was not required to exhaust prior to seizing this Court.

The Court also considered the Respondent State's objection to admissibility on the basis that the Application was not filed within six (6) months, which according to the Respondent State, is considered reasonable time in other international jurisdictions. First, the Court recalled its established jurisprudence that the reasonableness of the time frame for seizure depends on the specific circumstances of each case and should be determined on a case-by-case basis. Second, the Court found that the period of three (3) years, six (6) months and thirty (30) days, computed from 15 February 2013 when the Court of Appeal rendered its judgment on the Application for Review, to 14 September 2016, when the Applicant seized the Court, was a reasonable time for filing the Application. Third, the Court also took into account the personal circumstances of the Applicant, *inter alia*, that after the decision of 15 February 2013, the Applicant had pursued extraordinary remedies at the Commission for Human Rights and Good Governance. Therefore, the Court dismissed the objection to admissibility based on failure to file within a reasonable time. Having satisfied itself that all other conditions of admissibility, as set out in Article 56 of the Charter and restated in Rule 50(2) of the Rules, had been complied with, the Court held that the Application was admissible.



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The Court then considered whether the Respondent State violated the Applicant's rights by examining the four (4) allegations raised by the Applicant.

The first alleged violation was that, contrary to Article 15 of the Charter, the Respondent State violated the Applicant's right to work (i) when his employment was unlawfully terminated on 30 June 1996 by the Respondent State contrary to the provisions of the Tanzania Revenue Authority (TRA) Act No.11 of 1995 and (ii), through TRA's failure to secure his employment status. The Court observed that the Applicant neither demonstrated sufficiently that his retrenchment was unlawful nor that the Respondent State did not adhere to the procedures on retrenchment. This is because the Applicant's termination was based on a presidential directive in line with the powers of the President of the Respondent State to retire public servants in the public interest. Further, the Applicant was duly notified in writing through a government retrenchment circular of the reasons for his retirement, and he was paid all his entitlements, including gratuity. The Court also found that the Applicant did not adequately prove that he was an employee of TRA, thus, it was untenable to contend that TRA failed to secure his employment status. This is because the domestic courts in the Respondent State had, without divergence or contradiction, concluded that the Applicant was not an employee of TRA but rather an employee of the Ministry of Finance. Relatedly, the Court observed that in arriving at such conclusion, the domestic courts adhered to the established laws and procedures. Thus, the Court held that the Respondent State did not violate the Applicant's right to work as provided under Article 15 of the Charter.

The second alleged violation was that the Respondent State violated the Applicant's right to a fair trial under Article 7 of the Charter when he was not tried by an impartial court or tribunal; when he was not tried within a reasonable time and when the domestic courts failed to consider evidence he adduced before them. Having considered the arguments raised, the Court noted that both domestic courts and the Principal Secretary in the Ministry of Finance followed the procedures laid down under the law to consider the Parties' case in making their decisions pertinent to the Applicant's retrenchment. Thus, the Respondent State did not violate Article 7(1)(d) of the Charter.

On the issue of being tried within a reasonable time, the Court examined the timelines of each suit that was connected to the Applicant's grievance at the domestic courts, including the determination of preliminary objections, the appeal on preliminary objections, the merits of the matter, the appeal on the merits and the review of the Court of Appeal decision on the appeal on the merits. With this, the Court noted that the period for assessing reasonable time would run from the time the Applicant filed his case before the High Court on 1 October 1999 to 15 February 2013, when the Court of Appeal rendered its decision on the Application for Review. This totalled to a period of thirteen (13) years, four (4) months and



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fourteen (14) days, of which the Court noted was a reasonable time considering that both the Applicant and the Respondent State pursued the available judicial remedies before the national courts at all the different stages of consideration of the matter. Further, the Court also observed that there was no evidence on record to suggest that neither the Applicant nor the Respondent State hampered the procedures, and hence, the Respondent State did not violate Article 7(1)(d) of the Charter.

On the issue of the failure of the domestic courts to consider evidence adduced before it, the Court observed that the Applicant did not point to any specific evidence, consequently, the Respondent State did not violate the Applicant's right to be heard under Article 7 of the Charter.

The Court considered the third allegation, that the Respondent State violated the Applicant's right to equality before the law and equal protection of the law guaranteed under Article 3(1) and (2) of the Charter respectively, (i) through the decision of the domestic courts to declare that he was not an employee of TRA and (ii) by the failure of the High Court to hear his witness. The Court observed that both the High Court and Court of Appeal of the Respondent State held that the Applicant, in accordance with the TRA Act, was an employee of the Ministry of Finance. With this, the Court noted that the Applicant's rejection of the domestic courts' decision that he was not an employee of TRA could not amount to a violation of Article 3 of the Charter. Additionally, the Court observed that the High Court disqualified the Applicant's witness from testifying before the High Court in consonance with the laws, which was also considered and upheld by the Court of Appeal, when the Applicant raised the same as a ground of appeal. Moreover, the Court noted that the Applicant failed to demonstrate how the disqualification of his witness was unlawful and adversely affected his right to be treated equally before the law. The Court, therefore, held that the Respondent State did not violate the Applicant's right to equality before the law or to equal protection of the law as provided under Article 3(1) and (2) of the Charter, respectively.

The fourth allegation was that the Respondent State violated the Applicant's right to freedom from discrimination guaranteed under Article 2 of the Charter when the Court of Appeal of the Respondent State indiscriminately interpreted Section 16(2) of the TRA Act in distinguishing the meaning of revenue commissioners at the Ministry of Finance and TRA employees in view of the Applicant's retrenchment. By virtue of the Court of Appeal's interpretation, the Applicant contended that those who were considered revenue commissioners were absorbed automatically as TRA employees while the Applicant, who was an employee of the same department in the Ministry of Finance was not. The Court observed that the Applicant had failed to demonstrate how he was discriminated against through the application of Section 16(2) of the TRA Act since the Court of Appeal followed the law in determining that he was a government employee of the Ministry of Finance, thus, justifying his retrenchment and why he was not entitled to the



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same treatment as some of the commissioners. The Court, accordingly, held that the Respondent State did not violate the Applicant's right to freedom from discrimination under Article 2 of the Charter.

Having found that there were no violations established, the Court did not award any reparations.

As to costs, the Court ordered each Party to bear its own costs.

Further Information

Further information about this case, including the full text of the decision of the Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0552016>

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.