



JUDGMENT SUMMARY

JOSEPH JOHN V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 005/2018

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 *Joseph John v. United Republic of Tanzania*.

Mr. Joseph John (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 prison sentence of thirty (30) years, having been convicted of the offence of rape of a seventeen (17) year old girl. The Applicant alleged that the Respondent State violated his rights guaranteed under Articles 7(1)(b), (c) and (d) of the African Charter on Human and Peoples' Rights (the Charter) by not informing him of his right to bail despite the offence he was charged with being a bailable offence, not providing him with free legal representation during the proceedings before the domestic courts and delaying in arraigning him in court after his arrest and in concluding his trial and appeals, respectively. He also alleged that since he was under sixteen (16) years of age at the time he was arrested and arraigned before Court, he ought to have been tried before the juvenile court and not the District Court of Kahama, and that this violated his right under Article 7(1)(d) of the Charter. He sought reparations to redress the alleged violations, particularly, that his conviction and sentence should be set aside and he should be released from prison, and any other order the Court deemed fit in the circumstances.

The Respondent State objected to the material jurisdiction of the Court on the ground that the issues raised in the Application were either being raised for the first time before this Court or had been settled by the domestic courts. The Respondent State argued that, since the Court is neither a court of first instance nor an appellate court, the Court lacked jurisdiction to consider the Application. Having considered the objection, the Court held that it has material jurisdiction to consider the Application given that it alleged violations of rights provided for in the Charter to which the Respondent State is a Party.

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Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. 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 filed at the Court on 19 February 2018. The Court also held that it had temporal jurisdiction because 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.

On the admissibility of the Application, the Court considered the objection raised by the Respondent State based on the failure to comply with the requirement to file the Application within a reasonable time as set out under Article 56(6) of the Charter and Rule 50(2)(f) of the Rules of Court. In this regard, the Respondent State argued generally that the Application ought to be declared inadmissible as it was "hopelessly time barred". The Applicant claimed that the period of four (4) years, four (4) months and twenty-six (26) days that elapsed after the Court of Appeal of Tanzania's judgment of 24 September 2013 dismissing his second appeal, and 19 February 2018, when he filed his Application, is reasonable. The Court dismissed the Respondent State's objection on the grounds that the Applicant is a lay person, he is incarcerated with limited access to information and was self-represented when he filed the Application. The Court deemed that he is indigent as this was evident from the fact that, it is only after he filed the Application, that the Court granted him free legal representation. The Court noted that, these circumstances occasioned the delay in bringing the matter to the Court, and therefore found that the Application was filed within a reasonable time. The Court was also satisfied that the record showed that all other conditions of admissibility as set out in Article 56 of the Charter and restated in Rule 50(2) of the Rules of Court had been complied with.

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

The first allegation the Court considered was whether the Applicant's rights under the Charter were violated when he was not informed of his right to bail, yet the offence of rape is a bailable offence. The Court found that the presumptive right to bail relates to the right to liberty under Article 6 of the Charter as this provision states that: "in particular, no one may be arbitrarily arrested or detained". The Court found



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that the right to liberty demands that individuals accused of criminal offences should be released on bail if there are no reasons to keep them in custody pending trial. The Court set out that the issue for determination is whether there is a right to be informed of the right to bail. The Court also referred to Article 9(3) of the International Covenant on Civil and Political Rights (the ICCPR), to which the Respondent State is a party, which requires that accused persons may be released subject to guarantees to appear at trial or at any other stage of the judicial proceedings. The Court established that although neither Article 6 nor any other provision of the Charter or of other international human rights instruments, expressly provide for the right to be informed of the right to bail, the right to bail should be considered broadly. This broad interpretation of the right to bail would include the right to be informed of the right to bail. The Court found that, this is especially pertinent in circumstances where arrested persons are not represented by Counsel, they have not been informed of their right to be represented by Counsel or have not been provided with the assistance of Counsel, who would help them exercise their right to seek bail.

The Court determined that, since the Applicant was self-represented when he was first arrested, when he was arraigned in Court and subsequently, throughout the domestic proceedings, this clearly deprived him of the opportunity to benefit from the advice of Counsel regarding the exercise of his pre-trial rights, including applying for bail. In this circumstance, the provision of information on his right to bail was necessary and justified. The Court determined that, due to the Respondent State's failure to inform the Applicant of his right to bail, the Applicant was not able to exercise this right. The Court therefore found that the Respondent State's omission to inform the Applicant of his right to bail constituted a violation of the Applicant's rights under Article 6 of the Charter.

The second allegation the Court considered was whether the Respondent State's failure to provide free legal assistance to the Applicant during the domestic proceedings was a violation of Article 7(1)(c) of the Charter. The Court found that the Applicant should have been provided with free legal assistance because he was charged with a serious offence which carried a heavy minimum custodial sentence of thirty (30) years imprisonment, and the interest of justice required that he should have been provided free legal representation throughout his trial and appeals. The Court held, therefore, that the Respondent State violated the Applicant's rights under Article 7(1)(c) as read together with Article 14(3)(c) of the ICCPR, as they comprehensively provide for the right to defence, which has been interpreted to include the right to free legal assistance.

The third allegation the Court considered was whether the Respondent State violated the Applicant's right to be tried within a reasonable time. The Court had to consider whether the Applicant's arraignment before court after his arrest was within the time prescribed by the Criminal Procedure Act and whether the

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domestic proceedings involving the Applicant were concluded within a reasonable time. The Court determined that the Applicant's arraignment before the District Court of Kahama was in compliance with the provisions of the Criminal Procedure Act which require that one be presented before a Court, "as soon as practicable after his or her arrest". The Court also determined that the period of one (1) year, one (1) month and twenty-six (26) days taken by the District Court of Kahama to complete the Applicant's trial and render its judgment, the period of one (1) year and four (4) days taken by the High Court to determine his first appeal and the period of one (1) year, one (1) month and two (2) days that the Court of Appeal took to render its decision on his second appeal were reasonable. The Court therefore determined that the Respondent State had not violated the Applicant's right under Article 7(1)(d) of the Charter.

The last allegation related to the Applicant's contention that since he was under sixteen (16) years of age at the time of the commission of the offence and when he was arrested and arraigned in court, he ought to have been tried by the juvenile court rather than by the District Court of Kahama. The Court determined that the record showed that the Applicant was twenty (20) years at the time of the commission of the offence, at the time of his arrest and at the time of arraignment before court. He was above the age of majority in the Respondent State, which is set at eighteen (18) years and therefore he was properly tried before the District Court. The Court therefore dismissed this claim.

The Applicant prayed for the Court to grant him reparations for the violations against him, including the amount of United States Dollars Fifteen Thousand (USD 15,000) for material damages due to loss of income and United States Dollars Thirty Thousand Dollars (USD 30,000) in moral damages for the mental and physical health conditions he suffered while serving ten (10) years in prison. The Applicant prayed the Court to grant reparations in the amount of United States Dollars Five Thousand (USD 5,000) to each of his parents and six (6) siblings whom he alleged suffered moral prejudice due to the violations against him and were therefore indirect victims. He also sought an order that the Court set aside his conviction and sentence and release him from prison.

The Court dismissed the request for reparations for material prejudice due to loss of income on the basis that, there was no causal link established between the violations established and the loss of income the Applicant claimed. On the other hand, the Court determined that the violations established entitled the Applicant to reparations for moral prejudice since it is presumed that he suffered the said prejudice. In exercise of its discretion, the Court awarded the Applicant a lumpsum of Tanzanian Shillings Six Hundred Thousand (TZS 600,000) for the prejudice caused by the violation of his rights. The Court declined to grant the prayer for the setting aside of the Applicant's conviction and sentence and to order his release from prison because it had not decided that his conviction or sentencing was illegally imposed and there were



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no circumstances warranting it to grant this prayer. The Court also dismissed the prayer for reparations for moral prejudice suffered by the alleged indirect victims since there was no evidence of his filiation to the alleged indirect victims.

The Respondent State was ordered to pay the Applicant the amount awarded, 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.

Justice Chafika BENSAOULA issued a Dissenting Opinion.

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/0052018>

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.