



JUDGMENT SUMMARY

HUSSEIN ALLY FUNDUMU V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 016/2018

RULING ON JURISDICTION AND ADMISSIBILITY

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 Ruling in the case of *Hussein Ally Fundumu v. United Republic of Tanzania*.

Hussein Ally Fundumu (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 armed robbery. The Applicant alleged that the Respondent State violated his rights guaranteed under Articles 2, 3(1) and 7(1) (c) of the African Charter on Human and Peoples' Rights (the Charter) when it failed to provide him with free legal assistance and when the Court of Appeal failed to properly assess the evidence used to convict him. He sought reparations to redress the alleged violations.

On jurisdiction, the Respondent State raised an objection to the Court's material and temporal jurisdiction.

In respect of the Court's material jurisdiction, the Respondent State raised an objection on the grounds that the Court would be sitting as a court of first instance and as an appellate court, should it adjudicate over matters already finalised by the highest judicial organ of the Respondent State. The Court dismissed this objection and affirmed that it had material jurisdiction. It held that the alleged violations relating to the proceedings before the domestic courts were related to rights provided for in the Charter, namely: the right to freedom from discrimination, right to equality before the law, right to representation and right to a fair trial. Similarly, with regard to the Court sitting as an appellate court, the Court recalled its established jurisprudence, that it is not an appellate body with respect to decisions of national courts, however, this does not preclude it from examining such decisions in order to determine whether they comply with the Charter or any other human rights instruments ratified by the Respondent State.

With respect to the objection to the Court's temporal jurisdiction, the Respondent State argued that the alleged violations were instantaneous, and the Applicant was serving a sentence that was lawfully imposed. The Court noted that the instructive timelines for consideration were the dates when the



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Respondent State ratified the Charter and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol), as well as the date of depositing the Declaration provided for under Article 34(6) of the Protocol. The Court noted further that the violations alleged by the Applicant were based on the judgments of the High Court and Court of Appeal, which were rendered on 31 August 2007 and 18 June 2011, respectively, that is, after the entry into force of the Charter and the Protocol in the Respondent State, and the depositing of the Declaration by the Respondent State. Furthermore, the Court found that because the Applicant remained incarcerated since 26 May 2005, the effects of the alleged violations were continuing. The Court, therefore, dismissed the Respondent State's objection and determined that it had temporal jurisdiction.

Although the Respondent State did not contest the Court's personal and territorial jurisdiction, the Court nevertheless examined both aspects and held that it had jurisdiction to hear the Application.

In terms of the admissibility of the Application, the Court considered the two (2) objections raised by the Respondent State, relating, first, to the requirement of exhaustion of local remedies and, second, to the requirement of filing an application within a reasonable time.

On the non-exhaustion of local remedies, the Respondent State argued that the Applicant did not pursue the available judicial remedies provided for in the domestic courts to address his grievances, in spite of being informed by the trial court, of his right to appeal. The Court noted that the Applicant pursued his case up to the Court of Appeal, the highest judicial organ of the Respondent State, which rendered its judgment on 18 June 2011. In view of this, the Court held that the Applicant had exhausted local remedies.

Secondly, the Respondent State raised an objection that the Application was not filed within a reasonable period of time since the decision of the Court of Appeal was delivered on 18 June 2011, whereas the Application was filed on 10 May 2018, which was a difference of "seven (7) years and six (6) months" from the Court of Appeal decision. The Court reiterated its jurisprudence that the reasonableness of the time limit of seizure depends on the circumstances of each case and is determined on a case-by-case basis. Further, the Court observed that the time for consideration would be computed from 18 June 2011, when the Court of Appeal rendered its decision to 10 May 2018, when the Application was filed before the Court, which marked a total of six (6) years, ten (10) months and twenty-two (22) days. In view of the Applicant's particular circumstances, which he relied on to justify the period it took him to file the Application, the Court held that the Applicant failed to demonstrate how his incarceration and restricted movement prevented him from filing his Application timeously. Given the preceding, the Court held that six (6) years, ten (10)



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months and twenty-two (22) days was not a reasonable time for seizing the Court within the meaning of Article 56(6) of the Charter and as restated in Rule 50(2) (f) of the Rules.

Having held that the Application did not satisfy the requirement in Rule 50(2)(f) of the Rules, the Court did not assess the Application's compliance with the admissibility requirements set out in Articles 56(1), (2), (3), (4), and (7) of the Charter as restated in Rules 50(2)(a), (b), (c), (d) and (g) of the Rules, as these conditions of admissibility are cumulative. Therefore, the Court declared the Application inadmissible and dismissed it.

The Court ordered that each Party should 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/0162018>

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.