


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

## **SUMMARY OF APPLICATION**

**BAHATI MTEGA AND FLOWING MTWEVE (APPLICANTS)**

**VS**

**UNITED REPUBLIC OF TANZANIA (RESPONDENT STATE)**

**APPLICATION No. 009/2019**

### **I. THE PARTIES**

1. Bahati Mtega and Flowing Mtweve (hereinafter referred to as “the Applicants”) are both nationals of the United Republic of Tanzania (hereinafter referred to as “the Respondent State”). The Applicants bring this Application alleging a violation, by the Respondent State, of their rights to fair trial and to be free from torture.

2. The Respondent State became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 10 February 2006 and deposited the Declaration required under Article 34(6) of the Protocol on 29 March 2010, by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations. On 21 November 2019 it deposited, with African Union Commission, an instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the day on which the withdrawal took effect which was on 22 November 2020, being a period of one year after its deposit.

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

### **A. Facts of the Matter**

3. The Applicants aver that they were convicted and sentenced to life imprisonment and twelve strokes of the cane by the Ludewa District Court for the offence of gang rape contrary to Section 131 A of the Respondent State's Penal Code.
4. The Applicants state that their appeals, first, to the High Court and subsequently to the Court of Appeal were dismissed in their entirety. While the Court of Appeal's decision attached to the Application was dated 2 August 2016 the decision of the High Court attached to the Application indicates no date.
5. The Applicants state that according to the account given by the prosecution they were arrested following the alleged commission of an offence of gang rape on one Ester Mchilo.

6. The Applicants state that they denied all the details of the Prosecution's case on the basis that the charges were framed against them because they each had long standing disputes with the Prosecution Witnesses.
7. The Applicants further aver that the conviction of the First Applicant was baseless as the confession from the Second Applicant on which the First Applicant's conviction was premised was not produced at trial and that the 2<sup>nd</sup> Applicant had stated in the appeal process that the name that appeared on the charge sheet was not his name.

**B. Alleged violations:**

8. The Applicants allege that the Respondent State has violated their fundamental rights guaranteed in Article 5 of the Charter for being tortured to make confessions in prison, Section 12 (1) & (2) of the Constitution of the United Republic of Tanzania as well as Section 13 (6) (a),(b) & (c) of the same Constitution.

**III. PRAYERS OF THE APPLICANTS**

9. The Applicants pray the court to:
  - i. To allow their case and quash the whole proceedings of the appeal courts including their decisions as they violate their human rights.
  - ii. To compensate the Applicants for injuries suffered in police custody and in prison.