



Arusha, Tanzania

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**PRESS RELEASE  
JUDGMENT SUMMARY**

**GHATI MWITA V. UNITED REPUBLIC OF TANZANIA**

**APPLICATION No. 012/2019**

**(JUDGMENT ON MERITS AND REPARATIONS)**

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

**Date of Press Release: 1 December 2022**

**Arusha, 1 December 2022:** The African Court on Human and Peoples' Rights (the Court or the African Court), today, delivered a Judgment in the case of *Ghati Mwita v. United Republic of Tanzania*.

Ms. Ghati Mwita (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, she was serving a death sentence at Butimba Central Prison, Mwanza, having been tried and convicted for the offence of murder. She alleged a violation of her rights in connection with her conviction and sentencing.

In its judgment, the Court first considered whether it had jurisdiction to examine the Application. The Court observed that, as per Article 3(1) 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"), it had to, preliminarily, determine whether it had jurisdiction to hear the Application. In this regard, the Court noted that the Respondent State had raised an objection to its material jurisdiction. The Respondent State argued that the "Court is devoid of jurisdiction to entertain the Application before it." It submitted that the Court "is not vested with the jurisdiction to sit as an appellate

court and adjudicate on matters that have been decided by the highest court in a Respondent State”. The Respondent State also submitted that the Court is not “vested with jurisdiction to adjudicate over this matter, particularly quashing the death sentence and release the Applicant from prison.”

As regards the contention that the Court would be exercising appellate jurisdiction by examining certain claims which were already determined by the Respondent State’s domestic courts, the African Court reiterated its position that it does not exercise appellate jurisdiction with respect to the decisions of domestic courts. It also pointed out that notwithstanding that it is not an appellate court vis-à-vis domestic courts, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned. In the circumstances, the Court dismissed the Respondent State’s objection in so far as it alleged that the Court would be acting as an appellate court in hearing the Application.

In relation to the contention that the Court lacked jurisdiction to order the Applicant’s release from prison, the Court, relying on Article 27(1) of the Protocol, held that it had jurisdiction to grant various types of reparation, including release from prison, should the facts of a case so dictate. The Court thus also dismissed this aspect of the Respondent State’s objection to its material jurisdiction.

Although none of the parties questioned other aspects of its jurisdiction, the Court nevertheless examined its personal, territorial and temporal jurisdiction and confirmed that it had jurisdiction to hear the Application.

In terms of the admissibility of the Application, the Court, as empowered by Article 6 of the Protocol, had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 50 of the Rules of Court (the Rules), had been met. In this connection, the Court noted that the Respondent State had raised an objection relating to the time that it took the Applicant to file the Application.

According to the Respondent State, the Applicant had filed the Application six (6) years after the exhaustion of domestic remedies and this period could not be regarded as a reasonable time. The Court established that the instant Application was filed on 24 April 2019. It also established that the Respondent State’s Court of Appeal rendered its judgment dismissing the Applicant’s appeal on 11 March 2013. However, the

Applicant's application for review of the Court of Appeal's decision was dismissed on 19 March 2015. The Court held that an Applicant should not be penalised for choosing to pursue the review of the decision of the highest appellate court in a country. In this case, therefore, the Court considered that reasonableness of time should be computed from the date of the decision of the Court of Appeal on the Applicant's application for review which was 19 March 2015.

The Court then took special cognisance of the fact that the Applicant was not only incarcerated but had been on death row since her conviction and that she attempted to avail herself of the review procedure after the Court of Appeal dismissed her appeal. The Court held that since the Applicant was entitled to wait for the outcome of the review process, it could not penalise her for having recourse to this remedy. In the circumstances, the Court found that the period of four (4) years, one (1) month and five (5) days was reasonable within the meaning of Article 56(6) of the Charter. The Court thus dismissed the Respondent State's objection that the Application was not filed within a reasonable time

In terms of the other conditions of admissibility, the Court noted from the record, that the Applicant was well identified; that the Application was not incompatible with the Constitutive Act of the African Union and the Charter; that the language used in the Application was not offensive or insulting; that the Applicant submitted documents of various types as evidence; thereby, establishing that the Application was not based exclusively on news disseminated through the media; that the Applicant approached the highest court in the Respondent State, the Court of Appeal, which dismissed her appeal as well as her application for review, thereby fulfilling the requirement of exhaustion of domestic remedies; and that the Application did not deal with matters or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

Given the above analysis, the Court held that the Application met all the admissibility requirements in Article 56 of the Charter which are restated in Rule 50(2) of the Rules, and thus declared the Application admissible.

On the merits of the Application, the Court considered the Applicant's allegations of a violation of her right to life (Article 4), dignity (Article 5), right to fair trial (Article 7) as well as, a violation of Article 1 of the Charter.

In relation to the alleged violation of the right to life, the Court noted that the Applicant was raising two issues, first, that the Respondent State violated her right to life by imposing the death penalty outside the category of cases to which it can lawfully be applied and, secondly, by imposing the death penalty without considering the circumstances of the offender and offence.

On the Applicant's alleged improper imposition of the death penalty, the Court recalled that both the Respondent State's High Court and the Court of Appeal established that the Applicant had caused the death of one Medadi Aloyce by setting him on fire. It also established that the findings of the domestic courts had not been discredited before it. In the circumstances, the Court held that the Applicant had failed to offer cogent argument(s) or evidence to contradict the facts established by the domestic courts in relation to the circumstances of Medadi Aloyce's death and her role in the death. The Court thus dismissed the allegation that the Applicant was improperly sentenced to death.

As for the Applicant's allegation that the death penalty was imposed without considering the circumstances of the offender and the offence, the Court held that the mandatory nature of the death penalty, as provided for under Section 197 of the Respondent State's Penal Code, leaves the national courts with no choice but to sentence anyone convicted of murder to death, thereby resulting in arbitrary deprivation of life. The Court thus held that the Respondent State had violated Article 4 of the Charter by sentencing the Applicant to death under a regime that did not provide her an opportunity to mitigate her sentence upon conviction.

Citing her various mental health issues, the Applicant alleged that the Respondent State had violated her right to dignity by passing a sentence of death on a mentally ill person. Specifically, the Applicant contended that hanging, as means of executing the death penalty, amounts to cruel, inhuman and degrading treatment. It was also the Applicant's argument that her right to dignity was also violated by her long stay on death row.

After analysing the record, the Court found that there was nothing to indicate that the Applicant or her representatives raised her mental health status, at the preliminary hearing, during the trial proceedings or as a ground of appeal before the Court of Appeal. The Court also noted that the Applicant had not submitted that it was apparent to the trial court that she was mentally incompetent during her trial. In the absence of probative proof of the Applicant's mental health at the time of her trial before the High Court, the Court held that it had no basis, relating to the Applicant's mental health, to fault the findings of the trial court. In view of the preceding, the Court held that the Respondent State did not violate Article 7(1)(d) of the Charter.

In connection with the Applicant's challenge of the implementation of the death penalty by hanging, the Court, recalling its jurisprudence, held that the implementation of the death penalty by hanging, where such a penalty is permitted, is inherently degrading and "encroaches upon dignity in respect of the prohibition of ... cruel, inhuman and degrading treatment". The Court, therefore, found that the Respondent State had violated Article 5 of the Charter by prescribing the implementation of the death sentence by hanging.

On the Applicant's claims in relation to her stay on death row, the Court confirmed that the period of waiting for an execution can cause stress on persons sentenced to death, particularly when the wait is long. This stress, according to the Court, stems from the natural fear of death that a condemned prisoner has to live with. The Court then pointed out that while a person sentenced to death is entitled to exhaust all judicial processes, a balance must be struck between permitting one to access the available judicial remedies while not keeping individuals whose sentences have been confirmed by the highest court on death row indefinitely. Given that the Applicant had spent seven (7) years on death row, the Court held that the time she had spent on death row was unduly long and thus amounted to a violation of the right to dignity under Article 5 of the Charter.

The Applicant also alleged a violation of her right to fair trial due to the following reasons: delay between her arrest and trial; alleged bias during her trial; being sentenced to death based on insufficient, unreliable and circumstantial evidence and the presence of ineffective counsel during her trial.

The Court, recalling its jurisprudence, stated that in determining whether or not the duration of a trial is reasonable, each case must be treated on its own merits and that three (3) criteria should be determinative. These are the complexity of the case, the behaviour of the Applicant, and the behaviour of the national judicial authorities. In the instant case, the Court established that the Applicant was arrested on 4 February 2008, that the preliminary hearing was conducted on 15 February 2010, that her trial commenced on 29 November 2010 and that the High Court found the Applicant guilty and sentenced her on 19 September 2011. In total, the High Court proceedings leading to the Applicant's conviction, therefore, were concluded after three (3) years, seven (7) months. As regards the time between the arrest of the Applicant and the commencement of her trial, the Court recalled that, from the date of arrest to the commencement of trial, two (2) years nine (9) months and twenty-five (25) days lapsed. Regarding argument in respect of the undue prolongation of the trial, the Court noted that from the date of commencement of the trial to the conclusion of the same, a period of nine (9) months and sixteen (16) days elapsed.

As regards the time it took to commence proceedings against the Applicant, the Court observed that the Respondent State offered only a general explanation, to the effect that committal proceedings at the District Court are often prolonged, an explanation that, in any case, was not supported with evidence. The Court also noted that there was nothing on record to justify delay in the commencement of the trial since, for example, the prosecution principally relied on eyewitnesses to the murder. The Court further noted that the Respondent State did not demonstrate that the delayed commencement of the trial was due to the Applicant's conduct. In the circumstances, the Court held that the period of two (2) years, nine (9) months and twenty-five (25) days between the Applicant's arrest and the commencement of her trial was an inexcusable delay in the domestic procedures and, therefore, constituted a violation of Article 7(1)(d) of the Charter.

Given the nature of the offence and the trial on the whole, the Court also found that the period of nine (9) months and sixteen (16) days taken to conclude the trial was reasonable. Consequently, the Court held that the Respondent State did not violate Article 7(1)(d) of the Charter by reason of the time it took to conclude the Applicant's trial before the High Court.

On the Applicant's allegation that the trial court violated Article 7(1)(b) of the Charter by contravening the principle of presumption of innocence and by shifting the burden of proof to the Applicant and also by permitting assessors to cross examine her, the Court held that, on its own perusal of the record, there were no grounds on the basis of which it could impeach the domestic courts findings, particularly in relation to the alleged violation of Article 7(1)(b) of the Charter. The Court thus dismissed the Applicant's allegation of a violation of Article 7(1)(b) of the Charter.

As to the allegation of violation of the right to fair trial due to the conduct of assessors, the Court noted that under the Respondent State's law assessors are permitted to seek clarifications from accused persons. The Court thus held that it was the Applicant's duty to demonstrate that, in a particular case, the assessors went beyond merely seeking clarifications which was not shown to be the case in the instant matter. Consequently, the Court dismissed the Applicant's claim that the Respondent State violated her right to be tried by an impartial tribunal protected by Article 7(1)(b) of the Charter.

In relation to the Applicant's argument that the prosecution witness's testimony was inconsistent and lacked credibility and that the trial court used circumstantial evidence to convict her, the Court reiterated that the right to have one's cause heard requires that, in criminal matters, the accused should be convicted only upon being clearly proven guilty. However, the Court also pointed out that it does not substitute national courts when it comes to assessing the evidence adduced in domestic proceedings even though it retains the power to examine whether the manner in which such evidence was considered is compatible with international human rights norms. In the instant case, the Court found that the Applicant's allegations relating to the treatment of evidentiary issues had been dealt with by the Respondent State's Court of Appeal. In the Court's own assessment, the Applicant's allegations of insufficiency or unreliability of the evidence were not supported by the facts on record. Given that the High Court heard all the witnesses, the Court held that it could not, unless there were manifest errors, interfere with its findings.

Overall, the Court found that the evidence on record did not reveal any manifest error(s), which occasioned a miscarriage of justice to the Applicant. The Court thus

held that the Respondent State had not violated the Applicant's right to a fair hearing as protected under Article 7 of the Charter.

On the alleged violation of the right to effective representation, the Court noted that the Respondent State provided the Applicant counsel at its expense during the proceedings before the High Court as well as before the Court of Appeal. The Court further noted that there was nothing on the record to demonstrate that the Respondent State impeded the Applicant's counsel from accessing her in order to consult and prepare for her defence. The record also did not demonstrate that the Respondent State denied the Applicant's counsel adequate time and facilities required to prepare the Applicant's defence. The Court also found that there was nothing on the record to demonstrate that the Applicant informed the High Court or the Court of Appeal of any shortcomings in counsel's conduct of her defence. In the circumstances, the Court found that the Respondent State did not infringe the Applicant's right to effective representation and, therefore, did not violate Article 7(1)(c) of the Charter.

Given all the above, the Court reiterated its findings that the Respondent State violated the Applicant's right to a fair trial only to the extent that there was an unreasonable delay between her arrest and the commencement of her trial before the High Court. However, the Court did not find the same to have vitiated the entirety of the Applicant's trial before the domestic courts. In the circumstances, the Court held that the sentence imposed on the Applicant did not flow from a process that breached his right to a fair trial.

The Court, having found that the Respondent State violated Articles 4, 5, 7(1)(d) of the Charter, also held that it had violated Article 1 of the Charter.

On reparations, the Court reiterated its established jurisprudence in relation to the principles governing the award of reparations in international law. With regard to material prejudice, the Court dismissed the Applicant's claim for material prejudice due to her failure to provide supporting evidence.

On moral prejudice, the Court confirmed that the Applicant had suffered moral prejudice since the Respondent State violated her right to life, right to dignity and right to a fair trial. In the exercise of its equitable jurisdiction, the Court awarded the Applicant the sum of TZS 7 000 000 (Seven million Tanzanian Shillings)



As for the non-pecuniary reparations, the Court ordered the Respondent State to undertake all necessary measures to repeal the provisions for the mandatory death penalty in its Penal Code to guarantee the non-repetition of the violations similar to those that the Applicant had experienced. The Court also ordered the Respondent State to take all necessary measures for the rehearing of the Applicant's case on the sentencing through a process that does not allow a mandatory imposition of the death penalty, while upholding the full discretion of the judicial officer.

Although none of the Parties made any prayers in relation to the publication of the Judgment, the Court held that it was necessary to make an order for the publication of the Judgment. The Court thus ordered the Respondent State to publish this judgment, within a period of three (3) months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one (1) year after the date of publication.

On implementation and reporting, the Court ordered the Respondent State to submit to it, within six (6) months from the date of notification of the 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.

The Court also ordered each party to bear its own costs.

Justice Blaise Tchikaya issued a Separate Opinion.

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/0122019>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org)

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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](http://www.african-court.org).