



## JUDGMENT SUMMARY

### MARTHINE CHRISTIAN MSUGURI V. UNITED REPUBLIC OF TANZANIA

#### APPLICATION No. 052/2016

#### JUDGMENT ON MERITS AND REPARATIONS

1 DECEMBER 2022

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

**Arusha, 1 December 2022:** The African Court on Human and Peoples' Rights (the Court), today, delivered a Ruling in the case of *Marthine Christian Msuguri v. United Republic of Tanzania*.

Marthine Christian Msuguri (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated at Butimba Central Prison in Mwanza after he was convicted and sentenced to death for the offence of murder.

The Applicant alleged that the Respondent State, violated his rights in relation to proceedings before domestic courts. The Applicant alleges that the Respondent State violated Articles 4 and 7 of the African Charter on Human and Peoples' Rights (the Charter) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR) after the mandatory death sentence was imposed on him; Article 7 of the Charter due to the fact that the Respondent State failed to provide him with counsel and held him on pre-trial detention for more than six (6) years; and Article 5 of the Charter when he was held on pre-trial detention and in conditions of confinement that were inhumane and degrading.

The Applicant prayed the Court to direct the Respondent State to vacate the death sentence and grant him a new trial that conforms with the fair trial guarantees of the African Charter; in the alternative, to set aside the death sentence and grant him a resentencing hearing; and amend its law to ensure the respect for life.



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On the other hand, the Respondent State alleged that the Court lacks jurisdiction to hear the Application and prays the court to declare the Application inadmissible for non-exhaustion of local remedies, and for the Application not being filed within a reasonable time. The Respondent further prayed the Court to find that it has not violated any of the provisions as alleged by the Applicant and that the Court should dismiss the Applicant's prayers and order that he bears the costs of the proceedings.

On jurisdiction, the Court dismissed the Respondent State's objection and holds that it has material jurisdiction to hear the Application under Article 3(1) of the Protocol, which gives the Court powers to examine any Application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State. The Court further stated that although it does not exercise appellate jurisdiction with respect to claims already examined by national courts, it retains the power to assess the propriety of domestic proceedings as against standards set out in international human rights instruments ratified by the State concerned.

Although there were no objections raised with respect to the Courts personal, temporal, and territorial jurisdiction, in line with Rule 46(1) of the Rules, the Court nevertheless examined all the other aspects of its jurisdiction and found 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, to the requirement of exhaustion of local remedies, and the reasonableness of the time within which the Application was filed.

On the first objection, the Court noted that the Applicant's pursued his case up to the Court of Appeal level, the highest judicial organ of the Respondent State, which rendered its judgment on 11 March 2013. In view of this, the Court held that the Applicant had exhausted local remedies.

On the second objection, the Court found that the time within which the Application was filed is reasonable within the meaning of Article 56(6) of the Charter, considering the circumstances of the case, namely that the Applicant was incarcerated, and held on death row. The Court was also



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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.

Having found the Application admissible, the Court considered whether the Respondent State violated the Applicant's rights by examining the three allegations raised by the Applicant.

Firstly, the Applicant alleged that the Respondent State violated his right to life protected under Article 4 of the Charter by imposing mandatory death penalty as domestic courts did not take into account all aspects of the defence of insanity while sentencing him to death. In response, the Respondent State submits that the trial and appellate courts did not sustain the Applicant's defence of insanity because the latter did not meet the standard required by law and it was proven beyond reasonable doubt that the Applicant was sane and knew what he was doing when committing the offences.

On the Applicant's allegation that the imposition of the mandatory death sentence violated his right to life under Article 4 of the Charter, the Court considered that, in convicting the Applicant, the domestic courts not only exercised the judicial discretion to consider the specific circumstances and situation of the Applicant; but also undertook a proper assessment of the said circumstances, mainly the Applicant's defence of insanity. The Court however held that the determinative factor in assessing fairness regarding arbitrary deprivation of life under Article 4 of the Charter, is not only whether the trial court was left with the discretion to receive and consider submissions related to the specific situation of the Applicant and circumstances of the offence but more importantly that the judicial officer was able to apply a sentence that is alternative to the death sentence. Having found that the latter condition was not met, the Court held that the Respondent State violated Article 4 of the Charter.

In respect of the Applicant's allegation that his lengthy pre-trial detention violated his right to a fair trial protected under Article 7 of the Charter, the Court held that the judicial authorities of the Respondent State did not justify the time that it took for prosecution to file the charges, for the medical report to be produced, witnesses to be summoned and a medical expert be contacted. While observing that these delays, and the lack of justification do not portray due diligence as required under Article 7(1)(d) of the Charter, the Court found that the Respondent State violated

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the Applicant's right to be tried within a reasonable time guaranteed under Article 7(1)(d) of the Charter.

On alleged violation of the right to have an effective representation, the Court dismissed for lack of evidence, the claims related to lack of funds, sufficient qualification and expertise of state-appointed counsel and the fact that the latter labored under a conflict of interest as he continued to represent the Applicant after representing two co-accused who were discharged.

In respect of the alleged violation of the Applicant's right to dignity and to be free from cruel, inhuman or degrading treatment protected under Article 5 of the Charter, the Court held that the Respondent State had a duty of expediency in view of the lack of complexity of the case, the Applicant being on death row, and experienced a "well-founded fear" of execution. Accordingly, the Court found that the Respondent State violated the Applicant's right not to be subjected to inhuman and degrading treatment due to the anxiety and distress caused by his lengthy death row detention.

The Court further found that Article 5 was violated in respect of the Applicant's detention in the death row, and his confinement due to the inherently inhumane nature of the seclusion and psychological torture involved.

Having found these violations, the Court examined the Applicant's prayers for reparations. Firstly, the Court granted the Applicant the amount of Tanzanian Shillings Seven Million (TZS 7,000,000) for moral prejudice suffered as a result of the violations found. Secondly, the Court dismissed the prayer to vacate the sentence on the ground that its findings in this Judgment do not have any bearing on the Applicant's conviction. Regarding the prayer for non-repetition, the Court held that an order to repeal the provision on the mandatory death sentence was warranted and ordered so. The Court further ordered that the Respondent State conducts a retrial only in respect of the sentencing through processes that exclude the mandatory death penalty and ensures that the judicial officer retains full discretion to consider circumstances peculiar to the Applicant.

As far as publication, implementation and reporting are concerned, the Court held that the importance of the matter being adjudicated warranted a publication of the Judgment, and



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therefore ordered so. The Court further took judicial notice of non-implementation of similar orders made in many of its previous judgments involving the Respondent State and found it justified that the time to amend the provision of the Penal Code in the present Application should be of six (6) months. The Court granted the Respondent State one (1) year to conduct the rehearing of the Applicant's sentencing case; and six (6) months to report on measures taken to implement the Judgment in this case.

Regarding costs, 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 African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0522016>

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