TABLE OF CONTENTS

T A B L E O F C O N T E N T S i
I. THE PARTIES 2
II. SUBJECT MATTER OF THE APPLICATION 2
A. Facts of the matter 2
B. Alleged violations 3
III. SUMMARY OF THE PROCEDURE BEFORE THE COURT 3
IV. PRAYERS OF THE PARTIES 4
V. JURISDICTION 4
VI. ADMISSIBILITY 6
VII. MERITS 11
A. Allegation that the conviction was based on unreliable evidence 11
B. Allegation relating to the discriminatory assessment of evidence 13
VIII. REPARATIONS 14
IX. COSTS 15
X. OPERATIVE PART 15

The Court composed of: Blaise TCHIKAYA; Vice President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI- Judges; and Robert ENO, Registrar.

In accordance with Article 22 of 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") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the matter of

Igola IGUNA
self-represented

Versus

UNITED REPUBLIC OF TANZANIA
Represented by:

i. Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General;
iii. Mr Hangi M. CHANG'A, Assistant Director, Constitution, Human Rights and Election petitions; Office of the Solicitor General;
iv. Ms Vivian METHOD, State Attorney, Office of the Solicitor General; and
v. Mr Stanley KALOKOLA, State Attorney, Office of the Solicitor General.

After deliberation,

renders the following Judgment:

I. THE PARTIES

1. Igola Iguna (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania, who at the time of filing the Application, was incarcerated at Uyui Prison in the Tabora region, having been convicted of the offence of murder and sentenced to death. He challenges the proceedings in the national courts that led to his conviction and sentence.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), through of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, that is, one (1) year after its deposit, which is on 22 November 2020.[1]

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the records, that, on 22 April 1993, the Applicant and another not before the Court, broke into the house of Nkwimba Lumiki, then attacked and wounded her with a *machete*. Ms Lumsi Nkhaving been

[1] *Andrew Ambrose Cheusi v. United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

awoken by his mother's screams, ran to her aid. In the course of the attack, he was also injured by the Applicant, after which the Applicant escaped**.** Ms Lumiki was later rushed to the hospital, where she died from her wounds.

4. The Applicant and his accomplice were arrested four (4) months after the attack on Ms Lumiki and charged with murder. On 27 March 2001, they were convicted before the High Court of Tanzania sitting at Tabora and sentenced to death by hanging. The Applicant filed an appeal against the decision of the High Court and the appeal was dismissed by the Court of Appeal on 28 June 2003.

B. Alleged violations

5. The Applicant alleges the following violations**:**

   a) The right to non-discrimination protected under Article 2 of the Charter in relation to the judgment of the Court of Appeal and
   b) The right to a fair trial protected under Article 7(1) of the Charter in relation to the evaluation of evidence in the Court of Appeal.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 13 June 2017. On 16 June 2017, the Registry requested the Applicant to provide copies of the Judgment of the Court of Appeal which he submitted on 8 May 2018.

7. The Application was served on the Respondent State on 2 October 2018.

8. The Respondent State failed to file a Response to the merits even after several reminders by the Court to do so.

9. The Applicant filed his submissions on reparations on 13 May 2019 and this was served on the Respondent State on 14 May 2019 which filed its Response on 18 March 2021.

10. Pleadings were closed on 8 November 2022 and the parties were notified thereof.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the Court to:

    a. Make an Order quashing both conviction and sentence;
    b. Order his release from custody;
    c. Grant him reparations to the tune of Tanzanian shillings Fifty-Nine Million, One Hundred and Thirty-Six Thousand (59,136,000) pursuant to Article 27(1) of the Protocol;
    d. Grant any other legal remedy that the Court may deem fit in the circumstances of the Applicant's complaints.

12. The Respondent State prays the Court for the following:

    a. A Ruling dismissing the Applicant's Application for reparations in its entirety;
    b. A Declaration that the Respondent has not violated the provisions of the Charter and that the Applicant was treated fairly by the Respondent State;
    c. Any Order this Hon. Court may deem right and just to grant under the prevailing circumstances.

V. JURISDICTION

13. The Court notes that Article 3 of the Protocol provides as follows:

    1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

14. The Court underscores the provision of Rule 49(1) of the Rules that, "[t]he Court shall conduct preliminarily examination of its jurisdiction…in accordance with the Charter, the Protocol and these Rules."

15. The Court notes that, even though nothing on record indicates that it lacks jurisdiction, it is obligated to determine if it has jurisdiction to consider the Application. In view of this, with regards to its personal jurisdiction the Court notes, as earlier stated in this judgment, that the Respondent State is a party to the Protocol and on 29 March 2010, it deposited the Declaration with the African Union Commission. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration.

16. The Court recalls its jurisprudence that the withdrawal of the Declaration does not apply retroactively and only takes effect one (1) year after the notice of such withdrawal has been deposited, in this case, on 22 November 2020.[2] Resultantly, the Court finds that it has personal jurisdiction.

17. As regards its material jurisdiction, the Court notes that the Applicant alleges violation of Articles 2 and 7(1) of the Charter to which the Respondent State is a party and therefore its material jurisdiction has been satisfied.

18. With respect to its temporal jurisdiction, the Court underscores, in accordance with the principle of non-retroactivity that it cannot consider allegations of human rights violations that occurred before the Respondent State's obligations were to continuing and unle nature.

[2] *Andrew Ambrose Cheusi v. Tanzania* (merits and reparations), §§ 37-39.

19. In the instant case, the Court notes that the alleged violations are based on the alleged denial of the right to a fair trial in the national courts, which occurred between 1993 and 2003. In this regard, the alleged violations occurred after the Respondent State had ratified the Charter but prior to the ratification of the Protocol and the deposit of the Declaration on 29 March 2010. However, the alleged violations continued thereafter since the Applicant is on death-row based on his conviction by the national courts from procedures that he considers to be unfair.[3] Consequently, the Court finds that it has temporal jurisdiction.

20. The Court also notes that it has territorial jurisdiction, given that the facts of the case occurred in the Respondent State's territory.

21. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VI. ADMISSIBILITY

22. Article 6(2) of the Protocol provides: " t h e C o u r t s h a l l r u l e o r
o f c a s e s t a k i n g i n t o a c c o u n t t h e p r o v i s

23. Pursuant t o R u l e 5 0 (1) o f t h e R u l e s , " [t] h
admissibility of an Application filed before it in accordance with Article 56 of
t h e C h a r t e r , A r t i c l e 6 (2) o f t h e P r o t o

24. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:

[3] *Jebra Kambole v. United Republic of Tanzania*, ACtHPR, Application No. 018/2018, Judgment of 15 July 2020 (merits and reparations), § 24; *Dismas Bunyerere v. United Republic of Tanzania*, (merits and reparations) (28 November 2019) 3 AfCLR 702, § 28(ii); *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (25 June 2013) 1 AfCLR 197, §§ 71-77.

a. Indicate their authors even if the latter request anonymity;
b. Are compatible with the Constitutive Act of the African Union and with the Charter;
c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
d. Are not based exclusively on news disseminated through the mass media;
e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised with the matter; and
g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union, or the provisions of the Charter.

25. The Court notes that the conditions of admissibility set out in Rule 50(2) of the Rules are not in contention between the parties. However, pursuant to Rule 50(1) of the Rules, the Court is obligated to determine the admissibility of the Application.

26. From the record, the Court notes that, the Applicant has been identified by name in fulfilment of Rule 50(2)(a) of the Rules.

27. The Court notes that the claims made by the Applicant seek to protect his rights guaranteed by the Charter. It also notes that one of the objectives of the Constitutive Act of the African Union as stipulated under Article 3(h), is to promote and protect human and peoples' rights. The Court, therefore, holds that the Application is compatible with the Constitutive Act of the African Union and the Charter and thus meets the requirements of Rule 50(2)(b) of the Rules.

28. The Court finds that the Application does not contain any disparaging or insulting language and therefore, meets the admissibility requirement of Rule 50(2)(c) of the Rules.

29. The Application is not based exclusively on news disseminated through mass media as it is founded on court documents from the municipal courts of the Respondent State in fulfilment of Rule 50(2)(d) of the Rules.

30. The Court notes that, in accordance with Article 56(5) of the Charter, Rule 50(2)(e) of the Rules and as it has established in its remedies that must be exhausted by the Applicants are ordinary judicial remedies,[4] unless they are manifestly unavailable, ineffective and insufficient or the proceedings are unduly prolonged.[5]

31. In the instant case, the Court notes that, the Applicant was convicted of murder by the High Court and sentenced to death on 27 March 2001. He appealed against this decision to the Court of Appeal, the highest judicial organ in the Respondent State, which upheld the decision of the High Court by its judgment of 28 June 2003. The Court, therefore, holds that the Applicant exhausted the available local remedies.

32. With regard to the condition of filing an Application within a reasonable time after exhaustion of local remedies, the Court notes that Article 56(6) of the Charter does not specify any time frame within which a case must be filed before this Court. Rule 50(2)(f) of the Rules, which in substance restates Article 56(6) of the Charter, only requires an application to be filed within " a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised with the matter."

[4] *Mohamed Abubakari v. Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 64. See also *Alex Thomas v. Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 64; and *Wilfred Onyango Nganyi and 9 Others v. Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 95.
[5] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 77. See also *Peter Joseph Chacha v. Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 40.

33. In computing the time to be assessed against the requirement under Article 56(6) of the Charter, two elements are of relevance. Firstly, the reckoning of time within which to assess reasonableness in filing the Application should have been the date when the Court of Appeal rendered its judgment that is on 28 June 2003. However, in the instant case, the actual starting date for computing the time is 29 March 2010, that is, when the Respondent State filed its Declaration because that is when individuals could seise the Court with claims against the Respondent State.

34. Secondly, the Court observes that the period between 2007 and 2013 were the formative years of its operation. As the Court has previously held, during the stated period, members of the general public, let alone persons in the situation of the Applicant in the present case, could not be presumed to have had sufficient awareness of the existence of the Court.[6] Consequently, the period to be assessed in the present case, is that between 2013, when the public would be expected to have become aware of the Court and 2017, the year when the Application was filed, which is a period of four (4) years. The issue for consideration is whether such a period of time is reasonable within the meaning of Article 56(6) of the Charter.

35. The Court recalls its jurisprudence, that: " … the reasonableness timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis".[7] Some of the circumstances that the Court has taken into consideration include: imprisonment, being lay without the benefit of legal assistance,[8] indigence,

[6] *Sadick Marwa v. United Republic of Tanzania*, ACtHPR, Application No. 005/2016, Judgment of 2 December 2021, § 52.
[7] *Norbert Zongo v. Burkina Faso* (merits), *op. cit.,* § 92. See also *Alex Thomas v. Tanzania* (merits) *op.cit.,* § 73.
[8] *Alex Thomas v. Tanzania* (merits), *op.cit.,* § 73; *Christopher Jonas v. Tanzania* (merits) *op.cit.,* § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.

illiteracy, lack of awareness of the existence of the Court, incarceration at the death-row[9] and the use of extraordinary remedies.[10]

36. The Court notes that in the present Application, the Applicant is self-represented before this Court. Also, proceedings involving him before domestic courts and the alleged violations occurred between 2001 and 2003 before the Court came into existence.

37. The Court further notes that the Applicant was incarcerated and was therefore limited in movement and with limited flow of information which this Court has held in previous similar instances could cause delays in filing applications.[11] The latter factor is compounde incarceration on death row.

38. This situation of seclusion from the general population has without any doubt caused the Applicant to be cut off from possible information flow, and be restricted in his movements. The Court notes that these extenuating factors mitigate in his favour.

39. In view of these circumstances, the Court finds that the period of four (4) years that it took the Applicant to file the present Application, was reasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

40. The Court further notes that the Application does not concern a case which has already been 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 in fulfilment of Rule 50(2)(g) of the Rules.

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[9] *Evodius Rutechura v. United Republic of Tanzania*, ACtHPR, Application No. 004/2016, Judgment of 26 February 2021, § 48.
[10] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 56; *Werema Wangoko v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 49 *Alfred Agbes Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, §§ 83-86.
[11] *Supra* note 8.

41. The Court, therefore, finds that all the admissibility conditions have been met and that this Application is admissible.

VII. MERITS

42. The Applicant alleges the violations of Articles 2 and 7 of the Charter in relation to the following allegations:

    i. His conviction was based on unreliable evidence; and
    ii. The assessment of the evidence leading to the conviction was discriminatory.

A. Allegation that the conviction was based on unreliable evidence

43. The Applicant alleges that the Court of Appeal erred in its decision as it did not properly examine and evaluate the identification evidence adduced by "PW2". He submits further that the Cou arguments regarding the said "identification evidence" which caused a miscarriage of justice. The Applicant, therefore, alleges that the Court of Appeal violated his rights under Article 7 of the Charter.

44. The Respondent State did not file a response.

***

45. Article 7(1) of the Charter provides: Every individual shall have the right to have his cause heard …".

46. The Court reiterates its position according to which, it held that:

> (…) domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence, and as an international

court, this court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.[12]

47. In the instant case, the record before this Court shows that the national courts convicted the Applicant on the basis of evidence tendered by two (2) prosecution witnesses. The Court of Appeal in determining the evidence tendered by PW2 (the deceased's brother) relied on its jurisprudence especially the case of *Waziri Amani v. Republic* which enumerates the guidelines on the identification of witnesses. Among the considerations a judge must consider in assessing identification evidence are:

    a. the distance at which the witness observed the incident;
    b. the time at which the crime was witnessed;
    c. the conditions in which such observations occurred including the lighting at the scene; and
    d. Whether the witness knew or had seen the accused before.

48. The Court notes, that the Court of Appeal assessed the circumstances in which the crime was committed and considered the arguments by both the Respondent State and the Applicant, who was duly represented by counsel, in order to eliminate possible errors as to the identity of the perpetrator of the murder. Furthermore, the Court of Appeal particularly noted that the Applicant was at the crime scene and thus his *alibi* was fabricated, that he was well known to the victim and PW2, that a torch was used in the commission of the crime, that it was possible for PW2 to identify the Applicant and further that PW2 himself was injured by the Applicant's accomplice and therefore they were in close proximity. On the basis of the evidence adduced by the witnesses, the national courts convicted the Applicant and sentenced him to death.

[12] *Kijiji Isiaga v. Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.

49. The Court finds that the manner in which the domestic courts evaluated the evidence relating to the Applicant's i manifest error or miscarriage of justice to the Applicant. The Court therefore dismisses this allegation.

B. Allegation relating to the discriminatory assessment of evidence

50. The Applicant alleges that the manner in which the Court of Appeal arrived at his conviction through assessing the evidence tendered, violated his right to non-discrimination.

51. The Respondent State did not file a response.

***

52. Article 2 of the Charter provides:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

53. The Court observes that the onus lies on the Applicant to prove his claim but that he failed to substantiate it.[13] The Court also notes that nothing on the record demonstrates that the Applicant suffered any discrimination in the proceedings before the Court of Appeal. The Court notes that the Court of Appeal applied its law and jurisprudence in its assessment of the case to avert any peril of injustice. In this regard, the Court is satisfied that the Applicant has not proven that he was discriminated against and thus dismisses the claim.

[13] *Alex Thomas v. Tanzania* (merits) (2015) 1 AfCLR 465, § 140.

54. The Court holds that the Respondent State did not violate Article 2 of the Charter as alleged herein.

55. Having held that the Respondent State did not violate the rights of the Applicant, the Court nevertheless reiterates its finding in its previous cases[14] that the mandatory death penalty is a violation of the right to life among other rights in the Charter and should thus be expunged from the laws of the Respondent State. Furthermore, the Applicant should be given a hearing on the sentencing through a procedure that does not allow the mandatory imposition of the death sentence and which upholds the full discretion of the judicial officer.[15]

VIII. REPARATIONS

56. The Applicant prays the Court to grant him reparations for the violations he suffered including quashing his conviction and sentence and ordering his release.

57. The Respondent State prays the Court to dismiss the Applicant's for reparations.

***

58. Article 27(1) of the Protocol provides that:

> if the Court finds that there has bee
> rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

[14] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, §§ 104-114. See also*, Amini Juma v. United Republic of Tanzania,* ACtHPR, Application No. 024/2016, Judgment of 30 September 2021, §§ 120-131; *Gozbert Henerico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022, § 160.

[15] *Ally Rajabu and Others v. Tanzania* (merits and reparations), § 171. See also*, Amini Juma v. Tanzania* (merits and reparations), § 174; *Gozbert Henerico v. Tanzania* (merits and reparations), § 217.

59. In the instant case, given that no violation has been established, the issue of reparations does not arise. The Court, therefore, dismisses the Applicant's prayer for reparations.

IX. COSTS

60. The Parties did not make any submissions on costs.

***

61. The Court notes that Rule 32(2) of its Rules provides tha decided by the Court, each party shall bear its own costs, if any."

62. Consequently, the Court decides that each Party shall bear its own costs.

X. OPERATIVE PART

63. For these reasons,

THE COURT,

On Jurisdiction

Unanimously,

i. *Declares* that it has jurisdiction;

On Admissibility

By a majority of seven (7) for, and three (3) against, Justices Ben KIOKO, Tujilane R. CHIZUMILA and Dennis D. ADJEI, dissenting: