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## JUDGMENT SUMMARY

**THOMAS MGIRA**  
**V.**  
**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 003/2019**

### JUDGMENT ON MERITS AND REPARATIONS

**13 JUNE 2023**

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

**Arusha, 13 June 2023:** The African Court on Human and Peoples' Rights (the Court), today, delivered a Judgment in the case of *Thoms Mgira v. United Republic of Tanzania*.

Mr. Thomas Mgira (the Applicant), is a national of the United Republic of Tanzania, who at the time of filing his Application, was in prison on death row following his conviction for the offence of murder. He alleged that his right to a fair trial had been violated by the United Republic of Tanzania (the Respondent State) when its local courts convicted him based on the weakest evidence, that is, by visual identification by a single witness.

The Applicant alleged that such testimony was unsworn and uncorroborated and had several basic contradictions and inconsistencies which compromised its credibility. He further alleged that the Court of Appeal of the Respondent State denied itself the opportunity to correct such errors by refusing to grant his request for the extension of time to file his application for review of its judgment. Consequently, the Applicant alleges that the Respondent State violated his right to equal protection before the law and his right to a fair trial protected under Articles 3 and 7 of the African Charter on Human and Peoples' Rights (the Charter), respectively.

The Respondent State raised an objection to the Court's material jurisdiction. It asserted that the Applicant is asking the Court to sit as an appellate court and adjudicate matters of evidence which have been decided by its Court of Appeal.

The Court recalled that by virtue of Article 3(1) of the Protocol Establishing the African Court on Human and Peoples' Rights (the Protocol), it has jurisdiction 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.

As regards the Respondent State's contention that the Court would be exercising appellate jurisdiction by examining the evidentiary basis of the Applicant's conviction, the Court observed that it does not exercise appellate jurisdiction over the decisions of domestic courts. Notwithstanding that the Court is not an appellate court *vis-à-vis* domestic courts, it underscored that it has the power to assess the propriety of domestic proceedings in relation to standards set out in international human rights instruments ratified by the State concerned, and this does not make it an appellate court. Accordingly, the Court dismissed the Respondent State's objection to its material jurisdiction.

Although both Parties did not contest its temporal, personal and territorial jurisdiction, the Court nevertheless examined all the other aspects of its jurisdiction and affirmed that it had jurisdiction to hear the Application.

On the admissibility of the Application, the Court considered the objection raised by the Respondent State, relating to the requirement of filing the Application within a reasonable time after exhaustion of local remedies.

The Court reiterated its jurisprudence that the reasonableness of the time limit for seizure will depend on the circumstances of each case and should be determined on a case-by-case basis. The Court further recalls its position that the review procedure at the Court of Appeal of the Respondent State constitutes an extraordinary judicial remedy that an applicant is not required to exhaust. However, in cases where an applicant attempted to utilise the review procedure, the Court noted that it would consider the time that the Applicant expended in pursuing such a procedure.

In the instant case, the Court noted from the record that the Court of Appeal decided the Applicant's appeal on 29 April 2010 and on 7 September 2010, the Applicant filed his request for extension of time to file his application for review. The Applicant's request was, however, dismissed on 19 September 2013, which was three (3) years later. Given that the decision of the Court of Appeal was pending for three (3) years, the Court observed that it can fairly be presumed that the Applicant was awaiting the outcome of his request. As such, the Court deemed it important to consider this period computing the time.

Accordingly, from the date when the Court of Appeal dismissed the Applicant's request for extension of time to institute an application for review, that is, 19 September 2013 to the date when the Applicant seized the Court, that is, 22 January 2019, five (5) years, four (4) months

and three (3) days had elapsed. The Court, having considered that the Applicant was self-represented when he filed the Application before the Court, a convicted inmate on death row, secluded from the general population and with restricted movement and restricted access to information determined that the filing of the Application after a delay of five (5) years, four (4) months and three (3) days was reasonable in view of the circumstances.

The Court then satisfied itself that other conditions of admissibility set out in Article 56 of the Charter were met. It held that the identity of the Applicant was disclosed, the Application was compatible with the Constitutive Act of the African Union and the Charter; and that it did not contain disparaging nor insulting language. The Court further found that the Application was not based exclusively on news disseminated through mass media and was filed after exhaustion of local remedies and that the Application did not concern a case which was already settled within the terms of Article 56 (7) of the Charter. The Court therefore found the Application admissible.

On the merits, the Court considered whether the Respondent State violated the rights enshrined in Articles 3 and 7 of the Charter by examining three allegations of the Applicant (i) his conviction was based on evidence that was not credible (ii) his request for extension of time to file an application for review before the Court of Appeal was unfairly denied; (iii) the assessment by domestic courts of the evidence that led to his conviction was discriminatory.

On the first allegation, while the right to a fair trial requires a conviction on a criminal charge to be based on credible evidence, the Court acknowledged that the nature or form of admissible evidence for purposes of such conviction may vary across the different legal traditions as long as the evidence is sufficient to establish the culpability of the accused.

On visual identification evidence, the Court recalled its position in *Isiaga v. Tanzania* that when such evidence is the sole basis for a conviction, all possibilities for mistakes should be ruled out and the identity of the perpetrator of the crime should be established with certainty and the said evidence must demonstrate a coherent and consistent account of the scene of the crime.

In the instant case, the Court noted from the records that the national courts convicted the Applicant on the basis of evidence of visual identification tendered by three (3) Prosecution Witnesses (PWs). The courts principally relied on the testimony of PW1 (the deceased victim's daughter), who was at the scene of the crime when her mother was killed by the Applicant. The other two witnesses were, the police investigator (PW2) and the son of the deceased and brother of the first witness (PW3).

The Court observed that the national courts assessed the circumstances in which the crime was committed and considered the arguments of both the State and the Applicant, who was

duly represented by counsel, to eliminate possible errors as to the identity of the perpetrator of the murder. Furthermore, the domestic courts also examined the Applicant's defence of *alibi* and dismissed it as the Applicant did not specify the particularities of his defence and did not wish to call a witness in support of his defence. The Court found therefore, that, the way the domestic courts evaluated the evidence leading to the Applicant's conviction did not disclose any manifest error or miscarriage of justice to the detriment of the Applicant.

On the alleged denial of the request for extension of time to file an application for review of the Court of Appeal's decision, the Court observes that the Applicant concedes in his Application, that the Court of Appeal delivered its judgment in his presence and that he was represented by a lawyer. Having been aware of the content of the judgment, the Applicant could thus have been able to institute his notice of motion for review within the deadline specified in the domestic law. Accordingly, the Court found that the Applicant's failure to comply with the time limit for filing the application for the review was due to lack of diligence on his part.

In the light of the foregoing, the Court concluded that the assessment of the evidence by the national courts was carried out in a proper manner and that, consequently, the Court finds that the Respondent State did not violate the Applicant's right to a fair trial guaranteed under Article 7 of the Charter.

As regards the third allegation of the Applicant that the assessment by domestic courts of the evidence that led to his conviction was discriminatory, thus, violating his rights under Article 3 of the Charter, the Court noted that the right to equal protection of the law requires that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Court further noted that the right to equality before the law also requires that all persons shall be equal before the courts and tribunals.

In the instant Application, the Court observed that the national courts examined all the grounds in the Applicant's appeal and found that they lacked merit. In this regard, the Court reiterated that it found nothing on record that demonstrated that the Applicant was treated unfairly or subjected to discriminatory treatment in the course of the domestic proceedings. The Court therefore dismissed the Applicant's allegation that the Respondent State violated Articles 3(1) and (2) of the Charter.

On reparations, the Applicant prayed the Court to grant him reparations for the violations he suffered including quashing his conviction and sentence and ordering his release. The Respondent State prayed that the Court should dismiss the request for reparations, since the Applicant was convicted and sentenced in accordance with the law. The Court observed that no violation was established and thus, the request for reparations was no longer warranted and accordingly, it dismissed the Applicant's prayers for reparations.

Each Party was ordered to bear its own costs.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, Justice Blaise TCHIKAYA issued a Partially Dissenting Opinion, Justice Ben KIOKO, Justice Tujilane R. CHIZUMILA and Justice Dennis ADJEL issued a Joint Dissenting Opinion and Justice Chafika BENSAOULA issued a Dissenting Opinion.

### **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/0032019>

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

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