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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 8(2) of the Rules of Court (hereinafter referred to as "the Rules"), Imani D. ABOUD, President of the Court and a national of Tanzania did not hear the Application.

In the Matter of:

Thomas MGIRA

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Mr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General; and
ii. Ms Sarah Duncan Mwaipopo, Deputy Solicitor General, Office of the Solicitor General.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Mr. Thomas Mgira (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania. At the time of filing the Application, he was imprisoned at Butimba Central Prison awaiting execution, having been tried and sentenced to death for the offence of murder. The Applicant alleges a violation of his rights to a fair trial in relation to proceedings before the national courts.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights ("the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. The Respondent State deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court to receive cases 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 under Article 34(6) of the Protocol. The Court has held that the withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, being a period of one (1) year after the deposit, that is, on 22 November 2020.[1]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the records that the Applicant was arrested and charged with the offence of murder for killing his neighbour, Masaga Ntobi, on the night of 1 October 2002 at Inolelo Village in Mwanza Region.

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[1] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

4. On 8 April 2005, the Resident Magistrate Court with Extended Jurisdiction at Mwanza convicted the Applicant of murder and sentenced him to death by hanging. Dissatisfied with the conviction and sentence, the Applicant appealed to the Court of Appeal at Mwanza, which upheld the conviction and sentence on 29 April 2010.[2]

5. Subsequently, on 7 September 2010, the Applicant filed a notice of motion for extension of time to institute an application for review of the judgment of the Court of Appeal. According to the Applicant, the notice of motion was dismissed by a Ruling that was delivered on 19 September 2013.

B. Alleged violations

6. The Applicant claims that the Respondent State convicted him on the basis of evidence obtained from the weakest visual identification of a single witness. He contends that such evidence was unsworn and uncorroborated and had several basic contradictions and inconsistencies which compromised its credibility. According to the Applicant, 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 Charter, respectively.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 22 Janua
submissions on reparations were filed on 18 February 2019.

[2] It should be noted that Resident Magistrates with extended jurisdiction could be empowered under Section 173 of the Criminal Procedure Act (CPA) of the Tanzanian Criminal Procedure Code to try offences which "would ordinarily be tried by the High Court".

8. On 6 August 2019, both the Application a reparations were served on the Respondent State.

9. On 24 October 2019, the Registry drew provisions of Rule 55 of the Rules,[3] under which the Court may render a Judgment in default should the Respondent State fail to file a Response within the prescribed time-limit.

10. After several extensions of time, the Respondent State filed its response and the same was notified to the Applicant on 20 December 2022 together with a request to file his Reply within thirty (30) days of receipt. The Applicant did not file his Reply.

11. Pleadings were closed on 24 January 2023 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to make appropriate order(s) to remedy the violation of his rights by ordering his release from prison and payment of compensation for each year he spent in custody, computed on the basis of the income ratio of a citizen in the Respondent State.

13. In his submissions on reparations, the Applicant further prays the Court to grant the following orders:

    i. Under Article 27 of the Protocol, my basic reparation is my acquittal from the custody immediately after the court find merit of the to remedy more violation. Thus, the order of the court for the acquittal may be included reparation of the payment by assessment and consideration of the period I have staying in the custody per the national ratio of a citizen income per year on each year. [sic]

[3] Rule 63 of the Rules of Court, 2 June 2020.

ii. Under Article 7(1)(c) of the Charter, where the Court finds that the Applicant was not provided with a counsel of his choice during the trial and appeal, it may order his acquittal from custody. [sic]

14. On its part, the Respondent State prays the Court to grant the following orders with respect to jurisdiction and admissibility:

i. That, the Honourable Court is not vested with jurisdiction to adjudicate the Application;
ii. That, the Application has not met the admissibility requirements provided in Article 56 (6) of the Charter, Article 6 (2) of the Protocol and Rule 40 (6) of the Rules of Court;
iii. That, the Application be declared inadmissible.

15. On the merits of the Application, the Respondent State also prays the Court to grant that:

i. The Respondent State has not violated protection before the law and the right to a fair trial as provided in Article 3 and 7 of the African Charter on Huma
ii. The Applicant was tried and convicted in accordance with the laws of the Respondent State and international human rights standards;
iii. The Application be dismissed

16. On reparations, the Respondent State prays the following declarations and orders:

i. A Declaration that the interpretation and application of the Protocol and the Charter does not confer jurisdiction on the Court to acquit the Applicant;
ii. A Declaration that the Respondent [State] did not violate the cited provisions of the Charter and that the Applicant was convicted and sentenced in accordance with the law;
iii. An Order to dismiss the Application for Reparations; and
iv. Any other Order the Honourable Court may deem right and just to grant under the prevailing circumstances.

V. JURISDICTION

17. The Court observes 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.

18. In accordance with Rule 49(1) of the preliminary examination of its jurisdiction ... with the Charter, the Protocol and thes

19. On the basis of the above-cited provisions, the Court must, in every application, preliminarily, conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

20. In the present Application, the Court notes that the Respondent State has raised an objection to its material jurisdiction. The Court will thus, first, consider the objection to its material jurisdiction (A) before assessing other aspects of its jurisdiction (B).

A. Objection to the material jurisdiction of the Court

21. The Respondent State contends that the Applicant is requesting the Court to release him from prison, alleging that its domestic courts poorly evaluated the evidence on the basis of which he was convicted. According to the Respondent State, the request by the Applicant requires the Court to sit as an appellate court, which is not within the competence of the Court. The Respondent State submits that Article 3 of the Protocol does not confer on the Court the jurisdiction to sit as an appellate court and adjudicate on matters that have been decided by its highest court. In support of its

contention, the Respondent urged the Court to refers *Issa Konaté v. Burkina Faso*.

22. The Applicant did not reply to the Resp

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23. The Court recalls that by virtue of Article 3(1) of 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.

24. As regards the Respondent State's cont exercising appellate jurisdiction by examining the evidentiary basis of the Applicant's conviction, the Court reit that it does not exercise appellate jurisdiction with respect to the decisions of domestic courts.[4] At the same time, however, and notwithstanding that the Court is not an appellate court *vis-à-vis* domestic courts, it retains 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.[5]

25. In view of the above, the Court dismiss to its material jurisdiction and holds that it has material jurisdiction to hear this Application.

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[4] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14; *Kennedy Ivan v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 26; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.

[5] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29 and *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 130.

B. Other aspects of jurisdiction

26. The Court notes that the Parties do not contest the other aspects of its jurisdiction and nothing on record indicates that it lacks jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, the Court must satisfy itself that all aspects of its jurisdiction are met before proceeding.

27. In relation to its personal jurisdiction, as stated in paragraph 2 above, the Respondent State deposited the instrument of withdrawal of the Declaration under Article 34(6) of the Protocol on 21 November 2019. The Court has held that such withdrawal does not apply retroactively. Therefore, it has no bearing on matters pending before the Court prior to the filing of the instrument withdrawing the Declaration or new cases filed before the withdrawal took effect, being a period of one (1) year after the deposit of the notice of withdrawal, that is, on 22 November 2020.

28. Concerning its temporal jurisdiction, the Court notes that the alleged violations are based on the Resident Magistrate 2005 and the Court of Appeal's judgment notes that although the two (2) decisions were delivered after the Respondent State had ratified the Charter and the Protocol, the former judgment was delivered before the Respondent State deposited the Declaration under Article 34(6) of the Protocol.

29. This Notwithstanding, the Court further notes that the alleged violations are continuing in nature, as the Applicant remains convicted and is awaiting execution of the death sentence imposed upon him by the Resident Magistrate Court at Mwanza, on the basis of what he considers an unfair process.[6] Accordingly, the Court holds that it has temporal jurisdiction with respect to the instant Application.

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[6] *Tanganyika Law Society and Legal and Human Rights Centre v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34, § 84; *African Commission on Human and Peopl Kenya* (merits) (26 May 2017) 2 AfCLR 9, § 65; *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 29 (ii).

30. As regards its territorial jurisdiction, the Court holds that it has territorial jurisdiction, as the alleged violations occurred in the territory of the Respondent State**.**

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

VI. ADMISSIBILITY

32. In accordance with Article 6(2) of the Protocol, " t h e C o u r t s h a l l admissibility of cases taking into account the provisions of Article 56 of the C h a r t e r . "

33. Pursuant to Rule 50(1) of the Rules, " T h e C o u r t s h a l l a admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of t h e P r o t o c o l a n d t h e s e R u l e

34. 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 the following conditions:
>
> 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 seized 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 African Union or the provisions of the Charter.

35. The Court must satisfy itself that the Application fulfils these requirements.

36. In the present case, the Court observes that the Respondent State has raised only one objection to the admissibility of the Application relating to the requirement of filing an application within a reasonable time. The Court will consider the said objection (A) before examining other admissibility requirements (B), if necessary.

A. Objection based on failure to file the Application within a reasonable time

37. The Respondent State asserts that the instant Application was not filed within a reasonable time from the date local remedies were exhausted. In this regard, the Respondent State elaborates that the Court of Appeal delivered its judgment on 29 April 2010. Furthermore, it asserts that the Applicant has indicated that he filed an application for extension of time to apply for review, which was dismissed by the Court of Appeal on 19 September 2013. Accordingly, the Respondent State submits that the Applicant seized the Court five years after local remedies were exhausted, which is not a reasonable delay given the six (6) months limit developed by international human rights jurisprudence.

38. Regarding the Applicant's contention t
position as a condemned and indigent prisoner who is lay in matters of law and who was without legal counsel, the Respondent State avers that this is not a reasonable ground to be relied upon by the Court to entertain the Application. The Respondent State also notes that the Applicant had legal assistance in the domestic proceedings save for the alleged review

proceedings. Consequently, it submits that the Applicant filed his Application before this Court as an afterthought and thus, his justification for the delay has no merit.

39. Furthermore, the Respondent State contends that prisoners in Tanzania are allowed to access this Court anytime they wish to, hence, imprisonment is not a justifiable ground for the delay in filing the Application.

40. Recalling that the admissibility requirements in Rule 50 (2) of the Rules are cumulative, the Respondent State requests that the Court declare the Application inadmissible.

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41. The Court notes that with regard to filing the Application within a reasonable time, neither Article 56(6) of the Protocol nor Rule 50 (2) (f) of the Rules set a time-limit. For this reason, the Court has previously observed that: "reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis". In view of this, the Court has taken into consideration circumstances such as imprisonment, being lay without the benefit of legal assistance,[8] indigence, illiteracy, lack of awareness of the existence of the Court,[9] intimidation and fear of reprisal[10] and the use of extra-ordinary remedies.[11] Nevertheless, these circumstances must be proven.

42. The Court further recalls its position that the review procedure at the Court of Appeal of the Respondent State constitutes an extraordinary judicial

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[7] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (merits) (2014) 1 AfCLR 219, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.

[8] *Thomas v. Tanzania*, *ibid*, § 73; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.

[9] *Ramadhani v. Tanzania*, *ibid*, § 50; *Jonas v. Tanzania*, *ibid*, § 54.

[10] *Association pour le Progrès et la Defense des droits des Femme Maliennes and the Institute for Human Rights and Development in Africa v. Republic of Mali* (merits and reparations) (11 May 2018) 2 AfCLR 380, § 54.

[11] *Guehi v. Tanzania*, *supra*, § 56; *Werema and Another v. Tanzania* (merits), *supra*, § 49; *Alfred Agbes Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, §§ 83-86.

remedy that an applicant is not required to exhaust.[12] However, in cases where an applicant attempted to utilise the review procedure, the Court takes into account the time that the Applicant expended in pursuing such a procedure.

43. In the instant case, the Court notes from the records that the Court of Appeal decided the Applicant's appeal on 29 Ap extension of time to file his application for review on 7 September 2010. The Applicant's, 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, it can fairly be presumed that the Applicant was awaiting the outcome of his request and as such, the Court deems it important to consider this fact in computing reasonable time.

44. Accordingly, from the date when the Court of Appeal dismissed his 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 elapsed. The question for the Court's determination, therefore, is whether this delay could be considered as reasonable under the terms of Article 56(6) of the Charter as read together with Rule 50(2)(f) of the Rules.

45. In the present case, the Applicant al application was caused by [his] position as a condemned prisoner and layman in matters of law, indigent, incarcerated without assistance of legal counsel."

46. The Court notes that the Applicant is self-represented before this Court and as a convicted inmate on a death row, is secluded from the general population and cut off from possible information flow, and restricted in his movements.

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[12] *Guehi v. Tanzania*, *ibid*, § 51 ; *Wilfred Onyango Onyachi and Another v. United Republic of Tanzania* (merits) (2017) 2 AfCLR 65, § 56.

47. The Court also observes that the period between 2007 and 2013 were the early years of operation, when Members of the general public, let alone persons in the situation of the present Applicant, could not have been fully aware of the existence of the Court.

48. In view of the foregoing, the Court finds the filing of the Application within a period of five (5) years, four (4) months and three (3) days is justified and thus, his Application is deemed to have been filed within a reasonable time in accordance with Article 56 (6) of the Charter and Rule 50(2)(f) of the Rules.

B. Other admissibility requirements

49. The Court notes that the requirements in sub-rules 50 (2)(a), (b), (c), (d), (e) and (g) of the Rules, are not in contention between the Parties. Nevertheless, it must still ascertain that these requirements have been fulfilled before proceeding.

50. From the records, the Court notes that the Applicant is clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.

51. The Court also notes that the Applicant's claim guaranteed under the Charter. Further, Article 3(h) of the Constitutive Act of the African Union (AU), lists the promotion and protection of human and peoples' rights among the objectives of the AU. Therefore, the Court holds that the Application is compatible with the Constitutive Act of the AU and the Charter, and thus, fulfils the requirement of Rule 50(2)(b) of the Rules.

52. The Court further notes that the language used in the Application is neither disparaging nor insulting with regard to the Respondent State, its institutions or the African Union, in compliance with the Rule 50(2)(c) of the Rules.

53. Besides, the Application is also not based exclusively on news disseminated through mass media, rather, it is based on judicial decisions from the

municipal courts of the Respondent State. Thus, the Court holds that Application complies with Rule 50(2)(d) of the Rules.

54. The Court further stresses that the Applicant exhausted local remedies since, the Court of Appeal, the highest court in the Respondent State, delivered its judgment on 29 April 2010 in its entirety.

55. Concerning the admissibility requirement specified in Article 56 (7) of the Charter, the Court 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. The Court, therefore, finds that the Application complies with Rule 50(2)(g) of the Rules.

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

VII. MERITS

57. The Court recalls that the Applicant alleges the violation of Articles 3 and 7 of the Charter in relation to the following allegations:

    i. His conviction was based on evidence that was not credible;
    ii. The assessment of the evidence leading to his conviction was unfair.

A. Allegation that the conviction was based on unreliable evidence

58. The Applicant alleges that his conviction was based on the visual identification evidence of a single witness (PW1) which he considered to be unreliable and that both the Resident M Appeal "did not eliminate all the possi

59. The Applicant further avers that the evidence used to convict him had several contradictions and inconsistencies which compromise the credibility of the witness (PW1). The Applicant alleges that the said witness (PW1) contradicted herself and her co-witnesses in stating that the Applicant was named first at the Police station and also in relation to how, where and when he was arrested.

60. According to the Applicant, the uncorroborated and unsworn evidence of the key witness PW1 required corroboration from the other three witnesses who claimed to have been at the scene of the crime and should tally with the post-mortem examination and/or with testimony of the doctor who examined the deceased. However, the Applicant alleges, neither the witness testimony nor the result of the post-mortem examination was tendered and thus PW1's evidence was not cor

61. The Applicant also asserts that if the Court of Appeal had granted the extension of time to file an application for review of its own judgment, the errors might have been corrected. Instead, according to the Applicant, the conviction which was upheld violated his right to a fair trial.

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62. The Respondent State disputes the Appli that his allegations should be put to strict proof. The Respondent State argues that the Applicant's trial was conducted in accordance with its laws and in line with international human rights standards. In this regard, it asserts that the Court of Appeal thoroughly assessed the grounds of appeal and concluded that the appeal lacked merit and thus dismissed it.

63. In response to the Applicant's submissi the weakest visual identification of a single witness (PW1), the Respondent State contends that both the trial court and the Court of Appeal addressed

the issue and concluded that there was no doubt that PW 1 duly identified the Applicant during the incident, as the conditions on the material day and time were favourable for a correct identification. It further avers that the domestic courts considered all relevant facts and alleged contradictions and inconsistencies in the prosecution case and determined that the allegations lacked merit.

64. As regards the Applicant's assertion that the single witness (PW 1) should have been corroborated, the Respondent State avers that pursuant to Section 143 of its Evidence Act, no particular number of witnesses are required to prove any fact. It accordingly submits that the fact that the Applicant's conviction was based on the evidence of a single witness is immaterial. In addition, the Respondent State avers that the evidence provided by PW 1 did not need corroboration as the identification of the Applicant was done under favourable conditions.

65. As a result, the Respondent State submits that the Applicant was convicted and sentenced based on evidence which proved beyond reasonable doubt that he was guilty as charged.

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66. The Court notes that Article 7(1) of the Charter provides that

> 1. Every individual shall have the right to have his cause heard. This comprises:
>   a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
>   b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
>   c. The right to defence, including the right to be defended by counsel of his choice;
>   d. The right to be tried within a reasonable time by an impartial court or tribunal.

67. The Court notes that "a fair trial requ
in a criminal offence, and in particular, a heavy prison sentence, should be
based on strong and The nature or form of admissible[13] evidence".
evidence for purposes of criminal conviction may vary across the different legal traditions but it must always have sufficient weight to establish the culpability of the accused.

68. As far as the use of the visual identification is concerned, the Court recalls its position in *Isiaga v. Tanzania* that:

> (...) when visual identification is use
> convict a person, all circumstances of possible mistakes should be ruled out and the identity of the suspect should be established with certainty. This is also the accepted principle in the Tanzanian jurisprudence. In addition, the evidence of visual identification must demonstrate a coherent and consistent account of the scene of the crime.[14]

69. The Court further recalls that "it is no
principle, it is up to national courts to decide on the probative value of a particular piece of evidence.[15] Accordingly, the Court "c
role of the domestic courts and investigate the details and particulars of evidence used in domestic proceedings to establish the criminal culpability of indi[16] The Court only intervenes when there is a manifest error in the assessment of the national courts that would result in miscarriage of justice.

70. In the instant case, the records before this Court show that the national courts convicted the Applicant on the basis of evidence of visual identification tendered by three (3) Prosecution Witnesses (PW). The courts

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[13] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 599, § 174.
[14] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 218, § 68; *Werema and Another v. Tanzania* (merits), *supra*, § 60.
[15] *Ibid*.
[16] *Ibid*.

principally relied on the testimony of 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, who was identified in the records as the third Prosecution Witness (PW3).

71. The Court notes 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, in order to eliminate possible errors as to the identity of the perpetrator of the murder.

72. Furthermore, the domestic courts also examined the Applicant *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.

73. The Court finds, therefore, that the manner in which the domestic courts evaluated the evidence leading to the Applicant's conviction does not disclose any manifest error or miscarriage of justice to the detriment of the Applicant.[17]

74. On the denial of the request for extension of time to file an application for review of the Court, the Court observes that the decision 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 finds 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.

75. In the light of the foregoing, the Court concludes that the assessment of the evidence by the national courts was carried out in a proper manner and that,

[17] *Isiaga v. Tanzania*, *ibid*, § 73; *Werema and Another v. Tanzania*, *ibid*, § 63.

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.

B. Allegation that the manner of assessment of evidence was discriminatory

76. The Applicant asserts that the national courts, while examining his case, did not consider all the relevant facts and arguments that he submitted relating to the evidence used to convict him. By doing so, the Applicant argues, the Respondent State violated his right to equality before the law and equal protection of the law under Articles 3 of the Charter.

77. The Respondent State contends that the allegation by the Applicant that his rights under Article 3 of the Charter were violated lacks merit. It asserts that Article 3 of the Charter guarantees fair and just treatment of individuals within a legal system of a given country. In the present Application, the Respondent State submits that the Applicant has failed to establish how he was either discriminated against or not treated equally as other accused persons during the trial and subsequent appeals thereof.

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78. The Court notes that Article 3 of the Charter guarantees the right to equality and equal protection of the law in the following terms:

> 1. Every individual shall be equal before the law.
> 2. Every individual shall be entitled to equal protection of the law

79. The Court notes 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,[18] birth or other status

80. The Court further notes that this right is recognised and guaranteed in the Constitution of the Respondent State. The relevant provisions (Articles 12 and 13) of the Constitution enshrine the right in similar form and content as the Charter, including by prohibiting discrimination.

81. The right to equality before the law al equal before the courts and tribunals."[19]

82. In the instant case, the Court observes that the national courts examined all the grounds in the Applicant's appeal and found this regard, the Court finds nothing on record that demonstrates that the Applicant was treated unfairly or subjected to discriminatory treatment in the course of the domestic proceedings.

83. The Court therefore dismisses the Applallegation that the Respondent State violated Articles 3(1) and (2) of the Charter.

84. Having held that the Respondent State did not violate the rights of the Applicant, the Court nevertheless reiterates its finding in its previous cases[20] 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.

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[18] Article 26 of the International Covenant on Civil and Political Rights (ICCPR) (1966), see also *Isiaga v. Tanzania* (merits), *supra*, § 84. The Respondent became a State Party to the ICCPR on 11 June 1976.

[19] *Isiaga v. Tanzania*, *ibid*.

[20] *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.

VIII. REPARATIONS

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

86. The Respondent State prays that the Court should dismiss the request for reparations, contending that the Applicant was convicted and sentenced in accordance with the law. The Respondent State asserts that in order for the Court to order reparations, it must first find violation of human rights and establish that the said violation caused harm. Furthermore, it avers that the Applicant bears the burden of proof, and thus, must adduce evidence to the Court to prove the harm. In the present matter, the Respondent State argues that the Applicant, apart from requesting an order for his acquittal and compensation, he has not proved violation of his rights and any loss or damage suffered as a result of such violation. Accordingly, the Respondent State submits that the Court should not award the reparations requested by the Applicant.

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

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

88. In the instant case, no violation has been established and thus the request for reparations is no longer warranted. The Court, therefore, dismisses the Applicant's prayer for reparations.

IX. COSTS

89. The Applicant did not make any submissions on costs.

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90. The Court observes that Rule 32(2) of otherwise decided by the Court, each pa

91. Accordingly, the Court rules that in the circumstances of the case, each Party shall bear its own costs.

X. OPERATIVE PART

92. For these reasons:

THE COURT,

On jurisdiction

Unanimously,

i. *Dismisses* the material objection to its jurisdiction;
ii. *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,

iii. *Dismisses* objection to admissibility;
iv. *Declares* that the Application is admissible.

On merits