



JUDGMENT SUMMARY

MATOKE MWITA AND MASERO MKAMI V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 007/2016

**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 *Matoke Mwita and Masero Mkami v. United Republic of Tanzania*.

Matoke Mwita and Masero Mkami (the Applicants) are Tanzanian nationals who, at the time of filing this Application, were incarcerated at Butimba Central Prison, Mwanza Region, serving a life sentence following their conviction for the offences of gang rape and robbery with violence. The Application was filed against the United Republic of Tanzania (the Respondent State).

The Applicants alleged that the Respondent State violated their rights in relation to proceedings before domestic courts. According to the Applicants, the trial court erred by convicting them based on evidence which had doubts and contradictions where in there were misdirection and non-directions; that the Court of Appeal erred in considering evidence of the prosecution while there was reasonable doubt which could have been resolved in favour of the Applicants; that errors condoned by the Court of Appeal were contrary to the law and resulted in a miscarriage of justice; and thus the verdict of the said court violated the Applicants' fundamental rights and Article 3(1) and (2) of the Charter.

On the other hand, the Respondent State alleged that the Court is not vested with jurisdiction to adjudicate over this matter and prayed the Court to dismiss the Application as it has not met the admissibility requirements stipulated under Rules 50(2)(e) (f) of the Rules; and order the Applicant to bear the costs.

The Respondent State further prayed that the Court find that it has not violated Articles 3(1) and (2) of the Charter; that Court should dismiss the Application in its totality for lack of merit; that the Court should



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dismiss the Applicants' prayers; and find that the costs of this Application are borne by the Applicants.

On jurisdiction, the Respondent State averred that the Court would be acting both as a court of first instance and an appellate court by examining matters raised for the first time or previously finalised by domestic courts. In this regard, the Court held that it has material jurisdiction to hear the Application under Article 3(1) of the Protocol, by virtue of which it can 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. The Court consequently dismissed the objection and found that it had material jurisdiction to consider the Application.

Although there were no objections raised with respect to the Court's 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 objection raised by the Respondent State, relating, to the reasonableness of the time after exhaustion of local remedies within which the Application was filed. The Court found that the time within which the Application was filed – that is two (2) years and one (1) month – is reasonable within the meaning of Article 56(6) of the Charter, considering the circumstances of the case, namely that the Applicants are lay and that at the time of filing the Application, they were incarcerated and therefore limited in movement as well as to access to information.

The Court was also 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; namely that the identities of the Applicants are known; the Application is compatible with the Charter of the OAU and the Charter; the Application is not written in disparaging language; local remedies were exhausted; and the Application does not raise issues that have been previously settled.

Having found the Application admissible, the Court considered whether the Respondent State violated the Applicants' rights as they alleged.

Firstly, the Applicants alleged that the Respondent State violated their rights to equality before the law and equal protection of the law protected under Article 3 of the Charter when domestic courts convicted and

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sentenced them based on evidence that did not meet the required standards.

In respect of the Applicants' allegation that the Respondent State has violated Article 3 of the Charter with respect to the right to equal protection of the law, the Court noted that from the record of the present Application, there is no evidence to the effect that domestic proceedings were conducted based on any law or statute, different from that applied to other persons undergoing the same proceedings as the Applicants, as regards both the burden of proof and evidentiary issues. The Court further noted that, from the record, the Court of Appeal examined all evidence submitted by the prosecution but eventually discarded the evidence which appeared to be contradictory. The Court held that it cannot be said that the right to equality before the law was breached simply because the Court of Appeal ultimately discarded contradictory evidence which the Applicants claim could have been in their favour. In view of the foregoing, the Court dismissed the Applicants' allegation that the Respondent State violated Article 3 of the Charter in respect of the manner in which the Court of Appeal determined the issues of burden of proof and evidence.

Secondly, the Applicants alleged that the decision of the Court of Appeal to dismiss their appeal, set aside the sentence of thirty (30) years imprisonment and substitute it with life imprisonment left them aggrieved and without any opportunity to appeal.

The Court noted that pursuant to Section 131A (1) and (2) of the Respondent State's Penal Code, the sentence of life imprisonment is mandatory for the offence of gang rape. The Court held that it is in observance of the said provision that the Court of Appeal restored the sentence of life imprisonment initially meted out by the District Court. The Court also held that the Applicants did not show that any provision of the relevant law targeted them personally or that the Court of Appeal adjudicated differently in their respect as compared to other litigants in the same or similar situation. Accordingly, the Court dismissed the Applicants' claim and found that the Respondent State did not violate their rights as guaranteed under Article 3 of the Charter.

In the instant case, since no violation was established, the Court dismissed the Applicants' prayer 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 Ben KIOKO, Justice Tujilane R. CHIZUMILA and Justice Dennis ADJEI issued a Joint Dissenting Opinion.



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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/0072016>

For any other queries, please contact the Registry by email 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.