



**JUDGMENT SUMMARY**

**NIYONZIMA AUGUSTINE V UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 058/2016**

**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 *Niyonzima Augustine v. United Republic of Tanzania*.

*Niyonzima Augustine* (the Applicant) is a national of the Republic of Rwanda. At the time of filing the Application, he was serving a prison sentence of thirty (30) years, having been convicted of rape. He alleged that the United Republic of Tanzania (Respondent State), violated his rights guaranteed under Article 7(1)(c) of the Charter and Article 13 of the Constitution of the Respondent State in relation to proceedings before domestic courts.

On jurisdiction, the Respondent State raised an objection to the Courts material jurisdiction on two grounds. First, that this Court is not vested with the power to evaluate evidentiary matters adduced during the Applicant's trial before the domestic courts. Second that, this Court cannot be moved to sit as a trial or appellate Court for issues which are within the jurisdiction of the domestic courts.

The Court recalled that that under Article 3(1) of the Protocol, it has jurisdiction to examine cases concerning the interpretation and application of the Charter and is empowered to examine proceedings of domestic courts to determine whether they were conducted in accordance with the Charter. Noting that the present Application alleged violations of the Charter in respect of domestic proceedings, the Court found that it has material jurisdiction and consequently dismissed the Respondent State's objection.

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

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On the admissibility of the Application, the Court, considered the two (2) objections raised by the Respondent State, relating, first, to the requirement of exhaustion of local remedies, and, second, on the time within which the Application was filed after exhaustion of local remedies.

On the requirement of exhaustion of local remedies, the Court observed that the Applicant's allegations form part of the "bundle of rights and guarantees" relating to the right to a fair trial that led to his appeal, thus there was no need for him to go back to the High Court. Furthermore, this Court observes that the Respondent State had the opportunity to address the possible human rights breaches before the domestic courts, but it did not. Regarding the filing of a constitutional petition before the Respondent State's High Court, as provided for under Article 13 of the Respondent State's Constitution, the Court reiterated that this remedy, in the Tanzanian judicial system, is an extraordinary remedy that the Applicant is not required to exhaust prior to seizing this Court. Consequently, the Court held that the Applicant had exhausted local remedies as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules and therefore, it dismisses the Respondent State's objection.

On the objection on the ground of failure to file the Application within a reasonable time after exhaustion of local remedies, the Court reiterated its jurisprudence that the assessment of reasonableness of time depends on the particular circumstances of each case and should be determined on a case-by-case basis. In the instant case the Court observed that the time for filing the Application, which was nine (9) months and eight (8) days, is manifestly reasonable.

On the merits, the Court considered whether the Respondent State violated the Applicant's rights, by examining four (4) allegations raised by the Applicant, namely: (i) alleged violation of the failure to provide free legal assistance; (ii) allegation on the failure to notify the Rwandese Embassy in Tanzania about the Applicant's arrest and incarceration; (iii) allegation on failure to consider evidence; and last, (iv) allegation that the case was not proven beyond reasonable doubt.

On the alleged failure to provide free legal assistance, the Respondent State argued that the laws of Tanzania do not provide for mandatory or automatic free legal representation for those charged with the offence of rape. Furthermore, an accused person who needs free legal representation must apply to be provided legal aid and each request is assessed on a case-by-case basis. Moreover, the proceedings before domestic courts did not indicate that the Applicant needed legal aid and, in any case, legal aid is available at the Court of Appeal by virtue of the Respondent State's laws. The Respondent State refutes the Applicant's allegations, since the Government has always regarded its people as equal before the law,

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and provided them with entitlements without discrimination and promoted and protected their right to equality before the law.

The Respondent State asserted that it is committed to the protection of human rights as provided for under the Charter and has adopted legislative measures, including the enactment of the Legal Aid (Criminal proceedings) Act Cap 21 of the Laws, providing for free legal aid in criminal proceedings involving indigents, which was already enacted at the time the criminal case was filed against the Applicant.

This Court held that considering that the Applicant is a foreigner, is indigent and because of the seriousness of the penalty attached to the offence, it was in the interest of justice to provide the Applicant free legal aid. Furthermore, that it is the responsibility of the Respondent State to provide for free legal representation regardless whether the accused has made a request or not. The Court has also refuted the Respondent State's defence that free legal representation is availed depending on available resources, as unjustifiable. The Court held that, by failing to provide the Applicant with free legal representation during the domestic proceedings, the Respondent State violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR).

On the allegation on the failure to notify the Rwandese Embassy about the Applicant's arrest and incarceration, the Respondent State avers that the Applicant's rights under the Charter and the Constitution were fully observed and protected. The Court observed that while the Charter and the ICCPR do not explicitly provide for consular matters the Vienna Convention on Consular Relations (VCCR) to which the Respondent State is a party does. Article 36 (1) of the VCCR provides for the consular rights of foreign detained persons and duties and obligations of the State. It also noted that consular services are critical to the respect for the right to a fair trial for foreign detained nationals. The Court noted that Article 36 of the VCCR imposes dual obligations to the receiving State and provides the detainee with individual rights.

The first obligation is the duty to inform the foreign detained national of his right to consular services and the second is to facilitate the provision of consular services upon the request of the foreign detained national. The second duty is contingent upon the request from the detainee, after he or she has been informed of his right to consular services. Consequently, the Court held that by failing to inform the Applicant of his right to consular services, the Respondent State denied him the opportunity to seek for consular assistance to facilitate his defence, thereby violating Article 7(1)(c) of the Charter as read together with Article 36(1) of the VCCR.

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On the allegation of the failure to consider evidence by the domestic courts, the Court recalled its jurisprudence that “a fair trial requires that the imposition of a sentence in a criminal offence, and in particular, a heavy prison sentence, should be based on strong and credible evidence”. This Court also observed that, in reviewing this ground of appeal, the Court of Appeal considered the evidence on record, the statement of the victim and the testimony of the clinical officer and it was on that basis that, the Court of Appeal held that the trial court properly convicted the Applicant of rape since there was penetration and there was corroborative evidence and accordingly upheld the decision of the High Court, thereby dismissing the Applicant’s ground of appeal.

This Court further observed that even though there was a procedural inconsistency in admitting the medical report by the trial court, the medical report was expunged from the record by the High Court and therefore was not considered when evaluating the evidence. This procedural anomaly on the admittance of the medical report as evidence by the Trial Court did not disclose any manifest error resulting in a miscarriage of justice, requiring the Court’s intervention. As a result, the Court held that the Respondent State has not violated the Applicant’s right to fair trial as enshrined in Article 7(1)(c) of the Charter and consequently dismissed the allegation.

On the allegation that the case was not proven beyond reasonable doubt, the Respondent State avers that the prosecution discharged the burden of proof and proved its case beyond a reasonable doubt before the Trial Court, and that is why the High Court and the Court of Appeal of Tanzania upheld the Trial Court’s decision. The Court observed that, from the record, the prosecution relied on the corroborative testimonies of the victim and witnesses, since the medical record was expunged as part of the evidence on record by the High Court. Further, this Court observed that the Applicant had not demonstrated how the prosecution failed to prove its case beyond reasonable doubt. Consequently, the Court held that the Respondent State has not violated the Applicant’s right to fair trial as enshrined in Article 7 of the Charter and thus dismissed the allegation.

On reparations, the Applicant prayed for both pecuniary and non-pecuniary reparations including his release from prison. The Court noted that the Applicant had not established any linkages between the violations found and the material prejudice which he claims to have suffered. It consequently, dismissed the Applicant’s claims for reparations for material prejudice. The Court therefore, dismissed the Applicants prayer.

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On moral prejudice suffered, the Court awarded a total lumpsum of Three Hundred Thousand Tanzanian Shillings (TZS 300,000) as compensation for the two violations established on the right to free legal assistance and right to be provided with consular services. The Court also ordered the Respondent State to pay the compensation within six (6) months from the date of notification of this Judgment, free from tax, failure of which the State would be required to pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations, regarding the Applicant's prayer for his conviction and sentence to be quashed and he be released from prison, the Court found that he did not sufficiently demonstrate, nor did the Court establish, that his conviction and sentencing were based on arbitrary considerations and that his continued incarceration is unlawful. It therefore dismissed the prayer. Regarding the prayer for non-repetition of the violations against him, the Court observed that these violations were not systemic or structural in nature, furthermore, there is no evidence that the violations have been or are likely to be repeated. The Court therefore dismissed this prayer.

Each Party was ordered to 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/0582016>

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

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