



JUDGMENT SUMMARY

LEGAL & HUMAN RIGHTS CENTRE AND TANZANIA HUMAN RIGHTS DEFENDERS COALITION

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 039/2020

JUDGMENT ON MERITS AND REPARATIONS

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) delivered a judgment in the case of *Legal & Human Rights Centre and Tanzania Human Rights Defenders Coalition v. United Republic of Tanzania*.

Legal & Human Rights Centre and Tanzania Human Rights Defenders Coalition (the Applicants) are Non-Governmental Organisations (NGOs) registered and operating in the United Republic of Tanzania, having observer status with the African Commission on Human and Peoples' Rights (Commission). The Applicants alleged that by enacting Section 148(5) of the Criminal Procedure Act (CPA) which provides for non-bailable offences, the Respondent State violated Articles 1, 2, 6 and 7 of the African on Human and Peoples' Rights (Charter).

The Court observed in accordance with Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), that it had to, preliminarily, determine whether it had jurisdiction to hear the Application. In this regard, the Respondent State raised an objection to its personal jurisdiction arguing that the Applicants had not proved that they enjoyed observer status before the Commission. In this regard, the Court held that the Applicants had submitted a letter from the Commission indicating that the Legal & Human Rights Centre had observer status before the Commission. Furthermore, the Court held that the Tanzania Human Rights Defenders Coalition was listed in the Commission's website as an NGO with observer status before the Commission. Therefore, the Court held that it had personal jurisdiction to consider the case.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. In this regard, the Court found that it had material jurisdiction as the Application alleged violations of rights protected under the Charter. The Court also held that it had temporal

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jurisdiction as the alleged violations occurred after the Respondent State became a party to the Charter, Protocol and had deposited the Declaration required under Article 34(6) of the Protocol. Lastly, it also found that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State. The Court therefore concluded that it had jurisdiction to hear the Application.

Under Article 6 of the Protocol, the Court is mandated to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 50 of the Rules of Court (the Rules), have been met. In this regard, the Court first considered the objections raised by the Respondent State based on non-exhaustion of local remedies, the Application having not been filed within a reasonable time, the matter having been already settled and the incompatibility of the Application with the Constitutive Act of the African Union or the Charter.

As regards, the exhaustion of local remedies, the Court noted that the rule does not in principle require that a matter filed before the Court must also have been filed before the domestic courts by the same Applicant especially in a public interest case. The Court further noted that some individual litigants had already challenged the constitutionality of Section 148(5) of the CPA at the national courts with the last one, the case of *Dickson Sanga Paul* decided on 5 August 2020 by the Court of Appeal holding that Section 148(5) of the CPA was constitutional. In this regard, the Court held that the Applicants could not have been expected to seize the national courts on a public interest case regarding the same subject matter already decided by the Court of Appeal, as there would have been no prospect of success, making the remedy ineffective. Therefore, the Court held that the Application complied with Rule 50(2)(e) of the Rules.

With regard to whether the Application was filed within a reasonable time after exhaustion of local remedies, the Court noted that the Court of Appeal case in *Dickson Sanga Paul* was decided on 5 August 2020, which is three (3) months and fifteen (15) days before the Applicants seized the Court. The Court held that this period was reasonable and thus the Application complied with Rule 50(2)(f) of the Rules.

As to whether the matter has already been settled in accordance with Rule 50(2)(g) of the Rules, the Court observed that the Respondent State's argument was that the Court's decision in *Anaclet Paulo v. Tanzania* (*Paulo* case) settled the issues raised in the present case and therefore the Application should be declared inadmissible. In order to determine whether the issues in the present case had been settled, in line with its jurisprudence, the Court applied the three prong test, of conditions which were cumulative. The first was on identity of parties. In this regard, the Court noted that the Respondent State in the *Paulo* case and the present case is the same, that is, the United Republic of Tanzania. However, the Applicants were different as in the *Paulo* case, the Applicant was an individual while in the present case, the Applicants

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are two NGOs. Thus the Court found that the requirement for identity of parties had not been met. Nevertheless, the Court observed that Applicants need not always be exactly the same, as long as they are pursuing the same interest. In this regard, the Court noted that the Applicants in the present case were pursuing different interests than in the *Paulo* case. In this regard, the Court noted that the Applicant in the *Paulo* case, sought to protect individual rights allegedly violated in his trial and related to the said trial before the national courts. On the other hand, the Applicants in the present case are NGOs seeking to protect the rights of the public at large, arising from a public interest case before the national courts.

Furthermore, the Court noted that the prayers of the Applicant in the *Paulo* case and the prayers of the Applicants in the present case were distinct. In this regard, the Court noted that Mr. Paulo requested the Court to find in his favour regarding the alleged violations; grant him legal aid and grant him reparations and other reliefs as the Court deems fit. In contrast, the Applicants in the present case, requested the Court to order the Respondent State to put in place constitutional and legislative measures to guarantee the rights under the Charter; order that all suspects and accused persons charged with unbailable offence to be released on bail within one month, based on circumstances of each case. Therefore, the Court observed that the Applicant in the *Paulo* case sought individual remedies but in the present case, the Applicant's sought constitutive and legislative remedies in the public interest.

Finally, the Court observed that it did not receive any arguments in the *Paulo* case on Section 148(5) of the CPA other than on the right to liberty regarding the effect of Section 148(5) (a) of the CPA nor did it consider arguments regarding the ousting of the judicial discretion of the Court and the right to be heard due to the operation of Section 148(5) of the CPA as raised by the Applicants in the present case. Consequently, the Court found the identity of claims to be limited to the consideration of Section 148(5)(a) of the CPA. Likewise, the Court found that a first decision on the merits which is the last limb of "settlement" was only met as regards Section 148(5)(a) of the CPA. To this end, the Court concluded that only the consideration of Section 148(5)(a) of the CPA had been settled and thus the Court was not barred from determining whether Sections 148(5)(b)-(e) of the CPA and to this extent, the Applicants met the requirement under Rule 50(2)(g) of the Rules.

The Court rejected the objection based on non-compliance with the Constitutive Act of the African Union or the Charter, finding that the Applicants sought to protect the rights guaranteed under the Charter having alleged violation of Articles 1, 2, 6 and 7 of the Charter. Therefore, they had complied with Rule 50(2)(b) of the Rules.

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Although other conditions of admissibility were not challenged by the Respondent State, the Court was compelled by Article 6 of the Protocol to ensure that they had been fulfilled. In this regard, it held that, the Applicants had been identified by name in fulfilment of Rule 50(2)(a) of the Rules. Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules and that the Application was not based exclusively on news disseminated through mass media in fulfilment of Rule 50(2)(d) of the Rules. Therefore, the Court declared the Application admissible to the extent of the allegations concerning Sub-sections 148(5)(b)-(e) of the CPA.

On the merits of the case, the Court considered whether Sub-sections 148(5)(b) and (e) of the CPA were discriminatory and therefore a violation of Article 2 of the Charter. The Court found that Sub-sections 148(5)(b) and (e) of the CPA out rightly bar the courts from considering an application for bail by accused persons who have served a sentence exceeding three years and those who have been charged with offences relating to property worth over ten million Tanzanian Shillings (TZS 10,000,000). The Court held that in effect, the above-mentioned Sub-sections treat such accused persons less favourably as compared to accused persons charged with other offences which fall outside the ambit of Section 148(5) of the CPA. Consequently, the Court held that Sub-sections 148(5)(b) and (e) of the CPA were discriminatory and thus violated Article 2 of the Charter.

The Court then considered whether Sub-sections 148(5)(b) and (c) of the CPA violated the right to be presumed innocent. In this regard, the Court found that the outright barring of Courts from considering an application for bail provided for under Section 148(5) of the CPA is neither necessary nor proportionate to the aim that it seeks to achieve and thus it violated the right to be presumed innocent protected under Article 7(1)(b) of the Charter.

Furthermore, the Court decided whether Sub-sections 148(5)(b) and (c) of the CPA violated the right to be heard. The Court found that Section 148(5) of the CPA does not give the judicial officer any choice as to the grant of bail once an accused person falls under one of the categories enumerated under Section 148(5) of the CPA. It held that, this effectively denies an accused person his right to be heard and especially, to present his or her own unique circumstances that might allow the judicial officer to grant bail. Therefore, the Court held that Sub-sections 148(5)(b) and (c) of the CPA violated the right to be heard.

The Court further found that as a consequence of finding other violations of the Charter in the present case, Article 1 of the Charter was also violated.

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With regards to reparations, the Court ordered the Respondent State to take all necessary constitutional and legislative measures, within a reasonable time not exceeding two (2) years, to ensure Sub-sections 148(5) (b)-(e) of the CPA are amended and aligned with the provisions of the Charter so as to eliminate, among others, any violation of the Charter and other instruments ratified by the Respondent State. However, the Court rejected the request to order the Respondent State to release all persons charged with unailable offences within one (1) month from the date of this judgment, noting that the issue of whether bail should be granted or denied should be left to domestic courts to decide as they would need to consider individual circumstances in each case.

The Court on its own accord ordered the Respondent State to publish the Judgment within a period of three (3) months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one (1) year after the date of publication.

Lastly, the Respondent State was ordered to report on measures taken to implement this Judgment within twelve (12) months of notification of the judgment.

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/0392020>

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.