



JUDGMENT SUMMARY

YASSIN RASHID MAIGE V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 018/2017

JUDGMENT ON MERITS AND REPARATIONS

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

Arusha, 5 September 2023: The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Yassin Rashid Maige v. United Republic of Tanzania*.

Yassin Rashid Maige (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was serving a prison sentence of thirty (30) years, having been convicted for the offence of armed robbery. The Applicant alleged that the manner in which the Respondent State's domestic courts determined his case violated his rights as guaranteed under Articles 2, 3, 5, and 7(1) of the African Charter on Human and Peoples' Rights (the Charter).

On reparations, the Applicant prayed the Court to restore justice where it was overlooked, quash both the conviction and the sentence imposed upon him and order his release from prison. He further prayed the Court to grant any other orders that may be appropriate in the circumstances. The Applicant also prayed the Court to order the Respondent State to pay damages for material and moral prejudice.

On jurisdiction, the Respondent State objected to the Court's jurisdiction to grant the relief of releasing the Applicant, however, the Court noted that it has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation has been established. The Respondent State also contested the temporal jurisdiction of the Court on the ground that the alleged violations raised by the Applicant were not continuing in nature. However, the Court observed that the Applicant remains convicted on the basis of what he considers an unfair process. Therefore, the Court held that the alleged violations can be considered to be continuing in nature. Having conducted an examination of its jurisdiction and noting that nothing on the record indicates otherwise, the Court held that it had material, personal, temporal and territorial jurisdiction to determine the Application.

On admissibility, the Respondent State contended that the Application was inadmissible due the Applicant's failure to exhaust local remedies and for not filing the Application with a reasonable time. Having ascertained the admissibility of the Application in accordance with the conditions set out in Article 6(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol), Article 56 of the Charter as restated in Rule 50(2)

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of the Rules of Court (Rules), the Court dismissed the Respondent State's objections and held that the Application was admissible.

The Court then considered whether the Respondent State violated Articles 2, 3, 5, and 7(1) of the Charter as alleged by the Applicant. The Court further observed that the main contention in the Application centered on Article 7(1) of the Charter, hence, this alleged violation was addressed first.

The Applicant alleged that the actions or omissions of the domestic courts in the Respondent State resulted in a violation of his right to be heard as guaranteed under Article 7(1) of the Charter on five (5) grounds relating to: (i) not trying the Applicant within a reasonable time; (ii) not granting him legal representation; (iii) not properly examining and evaluating the evidence in the appeal proceedings by the Respondent State's Court of Appeal; (iv) not properly analysing the grounds of appeal by the Respondent State's Court of Appeal; and (v) not properly considering the defence of alibi by the Respondent State's Court of Appeal.

The Court upheld the second ground and found 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 ICCPR. The Court dismissed the first, third, fourth and fifth grounds, and found that the Respondent State had not violated the Applicant's right to be tried within a reasonable time provided under Article 7(1)(d) of the Charter, nor his right to defence, provided under Article 7(1)(c) of the Charter, nor the Applicant's right to equal protection of the law, protected under Article 3(2) of the Charter.

The Court noted that the Applicant had not made any specific submissions nor provided evidence that the Respondent State violated Article 2 of the Charter. Accordingly, the Court found that there was no basis to find a violation and held that the Respondent State did not violate the Applicant's right to non-discrimination protected under Article 2 of the Charter.

The Court further found that the existence of statutes authorising corporal punishment contravenes the Charter. In these circumstances, the Court held that the Applicant's sentence to be caned twelve (12) times violated his right to dignity as provided under Article 5 of the Charter

Having found that the Respondent State violated the Applicant's right to legal representation and his right to dignity, the Court ordered the Respondent State to pay the Applicant the sum of Three Hundred Thousand Tanzanian Shillings (TZS 300,000) for moral prejudice. The Court also ordered the Respondent State to remove corporal punishment from its laws, including but not limited to the Penal Code, Criminal



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Procedure Code and Corporal Punishment Act, in order to make them compliant with the prohibition of torture, cruel, inhuman or degrading treatment or punishment in Article 5 of the Charter.

Concerning the implementation of these orders, the Court ordered the Respondent State to submit to it within six (6) months from the date of notification of this judgment, a report on the status of implementation of the orders set forth therein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

Justice Rfaâ BEN ACHOUR issued a Partly Dissenting Opinion on the finding that the Respondent State has not violated the Applicant's right to be tried within a reasonable time under Article 7(1)(d) of the Charter.

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/0182017>

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.