



Arusha, Tanzania

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## JUDGMENT SUMMARY

### MARWA RUGUMBA KISIRI V. UNITED REPUBLIC OF TANZANIA

#### APPLICATION No. 027/2016

#### JUDGMENT ON MERITS AND REPARATIONS

5 SEPTEMBER 2023

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

**Arusha, 5 September 2023:** The African Court on Human and Peoples' Rights (hereinafter referred to as “the Court”) has, today, delivered judgment in the case of *Marwa Rugumba Kisiri v. United Republic of Tanzania*.

Mr. Marwa Rugumba Kisiri (hereinafter referred to as “the Applicant”) is a national of the United Republic of Tanzania (hereinafter referred to as “the Respondent State”). As at the time of filing the Application, the Applicant was serving a thirty (30) year prison sentence in the central prison of Butimba (Mwanza), after being found guilty of armed robbery. He challenges the violation of his rights in the course of the proceedings at domestic level.

It emerges from the records that at 3 a.m. on 13 June 2004 in the Nyamagana District (Mwanza Region), the Applicant, as well as three other persons not appearing before this Court, broke into the house of the Mr. Stanley Chilogo, stealing a television set and video player property of the victim. On 15 November 2006, the Court of the said District found the Applicant guilty of armed robbery and sentenced him to thirty (30) years term of imprisonment.

In his Application, the Applicant alleges that the Respondent State has violated his rights guaranteed under Articles 3(1), and (2), and 7(1)(c) of the African Charter on Human and Peoples' Rights (hereinafter referred to as “the Charter”) as a result of the proceedings before the national courts.

The Respondent State challenged the jurisdiction of the Court arguing that, contrary to the provisions of Article 3(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 26(1)(a) of the Rules of Court (hereinafter referred to as "the Rules"), this Application seeks to request this Court to act as an appellate court to review previously settled questions of fact and law by the Court of Appeal of Tanzania. According to the Respondent State, such an examination falls neither within the mandate nor the jurisdiction of the Court.

The Court held that it has already established that where allegations of human rights violations relate to the manner in which the national courts have assessed the evidence, it reserves the right to say whether such assessment is compatible with the international human rights instruments to which the Respondent State is a party, particularly the relevant provisions of the Charter. Having noted that the Applicant's allegations relate to the violation of his rights guaranteed under Articles 3 and 7 of the Charter, the Court ruled that it has the material jurisdiction to examine the Application and therefore dismissed the lack of jurisdiction objection raised by the Respondent State.

With regard to personal jurisdiction, the Court noted that the Respondent State is a party to the Protocol and that it also filed, on 29 March 2010, the Declaration provided for in Article 34(6) of the said Protocol, by which it accepted the jurisdiction of the Court to receive applications from individuals and non-governmental organizations having observer status with the African Commission on Human and Peoples' Rights. The Court also noted that on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an Instrument of Withdrawal of the Declaration it had made.

The Court reiterated, as it had decided in the matter of *Andrew Ambrose Cheusi v. United Republic of Tanzania*, that the withdrawal of the Declaration deposited in accordance with Article 34(6) of the Protocol shall not have retroactive effect and shall not affect cases pending at the time of deposit of the instrument of withdrawal, as is here the case. The Court also recalled that the withdrawal of the Declaration takes effect twelve (12) months after the deposit of the instrument of withdrawal. As regards the Respondent State, the withdrawal therefore takes effect on 21 November 2020. Accordingly, the Court held in conclusion that it has personal jurisdiction to hear the case.

The Court also concluded that it has temporal and territorial jurisdiction given that the violations took place after the entry into force of the Protocol in respect of the Respondent State and that they were committed on its territory.

Regarding the admissibility of the Application, the Respondent State raised two preliminary objections to admissibility; the first based on the exhaustion of local remedies, and the second, on the Application having been filed within an unreasonable time after the exhaustion of local remedies.

On the first objection, the Respondent State argued that there exists, at national level, remedies that the Applicant could have exercised before bringing his case to this Court. According to the Respondent State, the Applicant had the possibility of lodging a request for review of the judgment of the Court of Appeal. The Respondent State asserts that the Applicant also had the option of filing an unconstitutionality petition under the Basic Rights and Duties Enforcement Act.

The Court rejected the Respondent State's argument, noting that after the judgment of the High Court, the Applicant appealed to the Court of Appeal, the highest court in the judicial system of the Respondent State. The Court held that the Applicant had exhausted the local remedies since this appeal gave the national court ample opportunity to deal with the allegations raised by the Applicant before this Court. Also, on the question of the remedies of review and unconstitutionality, the Court recalled that it had previously decided that these are extraordinary remedies that the Applicant is not required to exhaust. The Court therefore concluded that the Applicant has exhausted the local remedies in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules.

The Respondent State also contended that the Application was inadmissible on the grounds of late filing. On this point, the Court recalled that under Article 56(6) of the Charter, reproduced in Rule 50(2)(f) of the Rules, there is no time limit within which the Court must be seized when the said time limit is reasonable depending on the criteria which are examined on a case-by-case basis according to the Court's case law.

In view of these circumstances, the Court ruled that the period of two (2) years nine (9) months and nine (9) days constitutes a manifestly reasonable period within the meaning of Article 56(6) of the Charter and of Rule 50(2)(f) of the Rules. The Court therefore rejected the objection to the admissibility of the Application.

With regard to the other conditions of admissibility which were not contested by the two Parties, the Court held that the Application was compliant thereto and therefore declared it admissible.

On the merits, the Court noted that the Applicant alleged the violation by the Respondent State of (i) his rights to equality before the law and equal protection of the law; and (ii) his right to free legal aid.

With respect to the first alleged violation of the right to equality before the law and equal protection of the law, the Court found that the Applicant failed to prove his allegation which was therefore dismissed.

Examining the alleged violation of the right to free legal aid, the Court observed that although the Applicant had been charged with armed robbery, a serious offense punishable by a minimum sentence of thirty (30) years in prison, nothing on file indicates that he was informed of his right to legal assistance. Moreover, the Applicant was not informed that he could benefit from free legal aid if he did not have the means to acquire such aid. The Court further noted that the Respondent State did not contest the fact that the Applicant was indigent. In view of these elements, the Court held that the Respondent State failed to comply with its obligations under Article 7(1)(c) of the Charter, read in conjunction with Article 14(3)(d) of the ICCPR, by not providing the Applicant with free legal assistance during the proceedings before the national courts.

With regard to reparations, the Applicant asked the Court to award him reparations for the violations he suffered, quash his conviction and sentence and order his release.

With respect to pecuniary reparations, the Court noted that the violation found caused moral damage to the Applicant and therefore, in the exercise of its judicial discretion, it awarded the Applicant the sum of three hundred thousand (300,000) Tanzanian shillings as a fair compensation.

As regards non-pecuniary compensation, the Court held that the nature of the violation in the present case does not reveal any circumstances such that would lead to a consideration of the Applicant's continued detention as a denial of justice or as an arbitrary decision; nor has the Applicant demonstrated the existence of other exceptional and compelling circumstances that could justify his release. Thus, the Court rejected the Applicant's request to have his conviction quashed and to be released.

The Court decided that each Party should bear his own costs.

**Further information:**

Further information on this case, including the full text of the judgment of the African Court, is available on the website: <https://www.african-court.org/cpmt/details-case/0272016>

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

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