

JUDGMENT SUMMARY

AMOS KABOTA V. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 032/2017
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 (the Court) delivered a Judgment in the case of *Amos Kabota v. United Republic of Tanzania*.

Amos Kabota (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated at Uyui Central Prison in the Tabora region, having been convicted of rape and sentenced to thirty (30) years imprisonment and one stroke of the cane. The Applicant alleged that the Respondent State violated his rights under Article 7(1) of the African Charter on Human and Peoples' Rights (the Charter) by convicting him on the basis of a defective charge sheet and unreliable evidence. He sought reparations to redress these alleged violations.

The Court observed that, as per 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), it had to, preliminarily, determine whether it had jurisdiction to hear the Application. In this regard, the Respondent State raised an objection to its material jurisdiction that the Court is not an appellate court and therefore has no jurisdiction to consider the Application. The Court however, held that it had material jurisdiction because the Applicant had alleged violations of his rights protected under the Charter. It further held that even though it is not an appellate court, it is empowered to assess whether domestic proceedings are in compliance with international human rights standards set out in the Charter and other human rights instruments ratified by the Respondent State.

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 personal jurisdiction since, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol. This Declaration allows individuals to file applications against the Respondent State as per Article 5(3) of the Protocol. The Court underscored that the Respondent State's withdrawal of the said Declaration on 21 November 2019 did not affect this Application, as the withdrawal took effect on 22 November 2020,

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which is after the Application had been filed at the Court, on 2 October 2017. The Court also held that it had temporal jurisdiction as the alleged violations occurred after the Respondent State had become a party to the Charter, Protocol and had deposited the Declaration required under Article 34(6) of the Protocol. Lastly, it found that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State.

The Court considered the objection raised by the Respondent State on failure to file the application within a reasonable time. In this regard, the Respondent State deemed that, the three (3) years, six (6) months and twenty-three (23) days it took for the Applicant to bring his claim to the Court was unreasonable. The Court dismissed this objection on the grounds that the Applicant was incarcerated, restricted in movement with limited access to information and was self-represented in the cases at the national courts. In light of these circumstances, the Court found that the Application was filed within a reasonable time.

Although other conditions of admissibility were not challenged by the Respondent State, the Court nonetheless had to ensure that they had been fulfilled. In this regard, it held that, the Applicant had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules. It also held that the allegations by the Applicant sought to protect his rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union and thus the Application complied with Rule 50(2)(b) 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 also that the Application was not based exclusively on news disseminated through mass media in fulfilment of Rule 50(2)(d) of the Rules.

As regards exhaustion of local remedies, the Court found that the Applicant had appealed the decision of the District Court convicting him of rape to the High Court which delivered its judgment on 9 August 2011 dismissing his appeal. He further appealed to the Court of Appeal, the highest judicial organ in the Respondent State which dismissed his appeal on 10 March 2014, he therefore exhausted local remedies in compliance with Rule 50(2)(e) of the Rules. The Court was also satisfied that the Application did not raise allegations already settled before another international tribunal and thus all the conditions of admissibility as set out in Article 56 of the Charter and Rule 50(2) of the Rules had been complied with. Resultantly, the Court declared the Application admissible.

On the merits of the case, the Court considered whether the Respondent State violated the Applicant's rights under Article 7(1) of the Charter, by allegedly convicting the Applicant on the basis of a defective charge sheet and unreliable evidence.



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On the allegation related to the charge and conviction on the basis of a defective charge sheet, the Court found that initially the Applicant had been charged with the offence of rape as opposed to statutory rape given the age of the victim but this was subsequently corrected by the District Court and acknowledged by the High Court. The Court therefore decided that the Applicant had been charged and convicted with the correct charge and there was therefore no violation.

Regarding the allegation that the Applicant was convicted on the basis of unreliable evidence, the Court found that the Applicant was convicted on the basis of the evidence of prosecution witnesses which had not been refuted. The Court therefore held that the procedure leading to the Applicant's conviction did not disclose any manifest error or miscarriage of justice requiring its intervention. Consequently, the Applicant's allegation was dismissed.

The Court, having found that there were no violations of the Applicant's rights, held that the Applicant's prayers for reparations were not justified.

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/0322017>

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.