



## JUDGMENT SUMMARY

### LEONARD MOSES V. UNITED REPUBLIC OF TANZANIA APPLICATION NO. 033/2017 RULING ON JURISDICTION AND ADMISSIBILITY

#### 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 Ruling in the case of *Leonard Moses v. United Republic of Tanzania*.

Leonard Moses (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, the Applicant was serving a sentence of thirty (30) years' imprisonment and twelve strokes of the cane, at Uyui Central Prison in the Tabora region, having been convicted of rape.

The Applicant alleged that the Respondent State had violated his rights under Articles 5, 7(1) and 7(1)(c) of the African Charter on Human and Peoples' Rights (the Charter) as his sentence to corporal punishment amounted to cruel, inhuman and degrading treatment; that he was charged and convicted on the basis of a defective charge sheet; and that he was not provided with free legal assistance. He prayed the Court to render him justice, quash his conviction and order his release in order to redress the 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 the Court's material jurisdiction; arguing that the issues raised in the Application fall under the jurisdiction of national courts. In its decision, the Court held that it had material jurisdiction because the Applicant had alleged violations of his rights protected under the Charter.

Furthermore, the Respondent State raised an objection to the Court's temporal jurisdiction that the alleged violations had occurred before the Respondent State became a party to the Protocol and they are not continuing. The Court held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter, and even though they occurred before it ratified the Protocol, the alleged violations continued after the ratification of the Protocol and deposit of the Declaration by the Respondent State as required under Article 34(6) of the Protocol.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. In terms of its personal jurisdiction, the Court found that it had been

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established 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 the present Application, as the withdrawal took effect on 22 November 2020, while the Application was received at the Court on 20 October 2017. Lastly, the Court decided that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State.

In terms of the admissibility of the Application, the Court, as empowered by Article 6(2) of the Protocol, had 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"), had been met. In this regard, the Court first considered the objections raised by the Respondent State on non-exhaustion of local remedies and on failure to file the Application within a reasonable time.

As regards, the exhaustion of local remedies, the Court noted that, the Applicant was convicted of rape on 17 April 2001 by the District Court of Tabora. He appealed against this decision to the High Court, which dismissed his appeal on 25 March 2002. He then appealed to the Court of Appeal, the highest judicial organ in the Respondent State, which upheld the judgment of the High Court by its judgment of 7 March 2005. Therefore, the Court held that the Applicant had exhausted local remedies and fulfilled the requirement of Rule 50(2)(e) of the Rules.

With respect to whether the Application was filed within a reasonable time, the Court noted that the period to be determined as reasonable or not was the period of seven (7) years, six (6) months and twenty-two (22) days. The Court noted that it has held in previous cases that, the period of five (5) years and one (1) month was reasonable owing to the circumstances of the applicants. In those cases, the Court took into consideration the fact that the applicants were imprisoned, restricted in their movements and with limited access to information; that they were lay, indigent, did not have the assistance of a lawyer in their trial at the domestic court, and that they were illiterate and were also not aware of the existence of the Court.

In contrast, the Court held that, in the instant case, the Applicant did not give any reasons as to why he could not seize the Court earlier than the seven (7) years, six (6) months and twenty-two (22) days it took him to do so. Furthermore, the Court noted that, while it does not penalise applicants for attempting to use the review procedure, such an attempt should be done in accordance with the requirements of domestic law to justify the delay in filing the Application before the Court. In this regard, the Rules of the Court of Appeal of the Respondent State provide that an application for review of its judgment should be filed within sixty (60) days of the order sought to be reviewed. The Court noted that in the instant case, the Court of



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Appeal found that the Applicant had not adduced any cogent reasons as to why it took him ten (10) years to file an application for extension of time to file for review of its judgment. Consequently, the Applicant could not rely on his own inordinate delay in the national courts to justify the delay in seizing the Court.

The Court thus held that the Application was inadmissible for having not been filed within a reasonable time in accordance with Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

The Court, having found that the admissibility requirement under Rule 50(2)(f) of the Rules was not fulfilled, did not find it necessary to assess whether the Application satisfied Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as the conditions of admissibility are cumulative.

The Court thus declared the Application inadmissible.

Each Party was ordered to bear its own costs.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, Justice Chafika BENSAOULA issued a Declaration.

### **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/0332017>

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

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