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JUDGMENT SUMMARY

MULOKOZI ANATORY V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 057/2016

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 (the Court), today, delivered a Judgment in the case of *Mulokozi Anatory v. United Republic of Tanzania*.

Mulokozi Anatory (the Applicant) is a national of the United Republic of Tanzania, who at the time of filing his Application, was incarcerated at Butimba Central Prison in Mwanza Region on death row having been convicted for the offence of murder. He alleged the violation of his rights under the African Charter on Human and Peoples' Rights (the Charter), namely, the right to: equality before the law and equal protection of the law guaranteed under Article 3(1)(2); right to dignity guaranteed under Article 5; and right to fair trial guaranteed under Article 7, during his trial by the domestic courts.

On 18 November 2016, the Court ordered provisional measures against the Respondent to refrain from executing the death penalty against the Applicant, pending determination of the Application.

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 on two grounds, that Article 3 of the Protocol does not vest it with jurisdiction to adjudicate over matters of evidence and procedure decided and concluded by the Court of Appeal as the highest court of the Respondent State. It also objected to the fact that the Application was calling for the Court to sit as a court of first instance and to adjudicate over matters which the

Applicant never raised during the trial and yet its mandate was limited to making declaratory orders and not to reverse the decisions of the Court of Appeal.

The Court recalled that by virtue of Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it provided that the rights alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State. In this case the alleged rights were protected by the Charter and the International Convention on Civil and Political Rights (hereinafter referred to as "ICCPR") to which the Respondent State is a party.

As regards the Respondent State's contention that the Court would be exercising appellate jurisdiction by examining the evidentiary basis of the Applicant's conviction, the Court observed that it does not exercise appellate jurisdiction over the decisions of domestic courts. Notwithstanding that the Court is not an appellate court *vis-à-vis* domestic courts, it underscored that it has the power to assess the propriety of domestic proceedings in relation to standards set out in international human rights instruments ratified by the State concerned, and this does not make it an appellate court.

With regard to the objection that the Court would be sitting as a court of first instance if it were to adjudicate over matters which the Applicant never raised during his trial, the Court observed that one of the two grounds of appeal raised by the Applicant was already dealt with at the domestic level with the Court of Appeal pronouncing itself on the matter.

Accordingly, the Court dismissed the Respondent State's objection to its material jurisdiction. Although both Parties did not contest its temporal, personal and territorial jurisdiction, the Court nevertheless examined all the other aspects of its jurisdiction and affirmed that it had jurisdiction to hear the Application.

On the admissibility of the Application, the Court considered the objection raised by the Respondent State, relating to the non-exhaustion of local remedies. The Court noted that, the Applicant was convicted of murder by High Court of Tanzania at Bukoba on 6 March 2014 and upon appeal, the sentence and conviction were upheld by the Court of Appeal of Tanzania at Bukoba on 23 February 2015.

The Court observed that the claims raised by the Applicant were also raised in substance at the national courts, given that he had also challenged the procedure leading to his conviction. The Court further observed that the Applicant's allegations about his conviction being based on circumstantial evidence and the defence of an *alibi*, revolved around issues relating to the proceedings before the domestic courts, which were considered by the domestic courts. The

Court observed that even if the issues had not been raised by the Applicant at the domestic level, the domestic courts ought to have been aware of them as they were precipitated by proceedings at the domestic courts, as such, they would be considered as part of the “bundle of rights and guarantees” relating to the right to a fair trial that led to the Applicant’s appeal. As a result of this, there would have been no need for the Applicant to seek redress at the High Court, since the Respondent State would have already had the opportunity to address the possible human rights breaches before the domestic courts.

Regarding the filing of a constitutional petition before the Respondent State’s High Court, the Court reiterated its jurisprudence that this remedy in the Tanzanian judicial system, is an extraordinary remedy that the Applicant is not required to exhaust prior to seizing the Court. Consequently, the Court held that local remedies had been exhausted as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules and therefore, dismissed the Respondent State’s objection.

The Court then satisfied itself that other conditions of admissibility set out in Article 56 of the Charter were met. It noted that the Application had been filed within a reasonable time of one (1) year, six (6) months and twenty-three (23) days after the dismissal of the Appeal by the Court of Appeal. It held that the identity of the Applicant was disclosed, the Application was compatible with the Constitutive Act of the African Union and the Charter; and that it did not contain disparaging or insulting language. The Court further found that the Application was not based exclusively on news disseminated through the mass media and was filed after exhaustion of local remedies and that the Application did not concern a case which was already settled within the terms of Article 56 (7) of the Charter. The Court therefore found the Application admissible.

On the merits, on the 1st allegation of the alleged violation of the right to equality before the law and equal protection of the law, the Court found that the Applicant had merely stated that the Respondent State violated this right without demonstrating how it did so, contrary to its jurisprudence which requires further substantiation. Notwithstanding this, the Court observed that the records on file illustrated that the Applicant was accorded all the guarantees to ensure a fair trial, including free legal representation, a preliminary examination was conducted to ascertain the truth or admissibility of evidence held during a trial, a cross examination of his witnesses, he testified on his own behalf and finally, the trial was held in the presence of three assessors. In view of the foregoing, the Court dismissed his allegation that the Respondent State has violated Article 3(1) and (2) of the Charter.

On the 2nd allegation of violation of the right to dignity, the Court observed that the Applicant was beaten up by a mob during his arrest and not by the police authorities who rescued him from death by mob lynching. Consequently, the Court dismissed the allegation and held that the Respondent State has not violated the right to dignity as guaranteed under Article 5 of the Charter. Finally, the Court observed that there was a growing global trend to abolish the death penalty and or restrict it only for the most heinous of offences.

On the 3rd allegation of violation of the right to a fair trial with regard to the Applicants complaint that he was convicted on the basis of a caution statement which he later retracted, the Court observed that the trial court conducted a preliminary examination to ascertain whether the Applicant recorded his caution statement freely without the use of force, resulting in it being admitting as authentic and thereafter being considered as part of the evidentiary record. The Court also observed that the domestic courts did not convict the Applicant solely on the basis of the caution statement but also on corroborated testimonies from four witnesses, three exhibits, including a medical examination report as well as the Applicant's testimony. Consequently, it held that the Respondent State had not violated the Applicant's right to fair trial as enshrined under Article 7(b) and (c) of the Charter and Articles 14(2) and Article 14(3)(e) of the ICCPR.

On the allegation of the non- consideration of the defence of *alibi*, the Court noted that the issue related to the right to have one's cause heard under Article 7 of the Charter. Records on file indicate that the Applicant was given an opportunity to produce and to examine witnesses whose names were listed on the list of witnesses during the preliminary hearing, furthermore the trial court summoned the medical doctor to provide his testimony. Finally, the Court observed that the Applicant did not provide any justification as to why he did not comply with the laid-out procedures and timelines in raising his defence of *alibi*, neither did his lawyer. Consequently, it held that the Respondent State had not violated the Applicants' right to defence as enshrined in Article 7(c) of the Charter with respect to the use of the defence of *alibi* and therefore, dismissed the allegation.

Having established no violation, the Court dismissed the Applicants prayers as unjustified and did not order any reparations.

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 Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA issued a Joint Dissenting Opinion on the

alleged violation of Article 5 of the Charter. Justice Chafika BENSAOULA, issued a Declaration, on the same issue.

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/0572016>

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.