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The Court composed of: Modibo SACKO, Vice President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, and Dennis D. ADJEI – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 8(2)[1] of the Rules of Court (hereinafter referred to as "the Rules"), Judge Imani D. ABOUD, a member of the Court and a Tanzanian national, did not hear the Application.

In the Matter of

Marwa Rugumba KISIRI

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr. Boniphace Nalija LUHENDE, *Solicitor General, Office of the Solicitor General*;
ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General;
iii. Mr Moussa MBURA, Director, Civil, *Principal State Attorney*, Office of the *Solicitor General*;
iv. Mr M. CHANGA, Deputy Director, Human Rights and Electoral Disputes, Office of the Solicitor General;
v. Ms Vivian METHOD, State Attorney, Office of the Solicitor General;

[1] Formerly Rule 8(2) of the Rules of Court of 2 June 2010.

vi. Ms Jacqueline KINYASI, State Attorney, Office of the Solicitor General; and
vii. Ms. Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs, East Africa Cooperation.

After deliberation,

renders this Judgment:

I. THE PARTIES

1. Marwa Rugumba Kisiri (hereinafter referred to as "the Ap
Tanzanian national, who at the time of filing the Application, was serving a thirty (30)- year sentence at Butimba Central Prison in Mwanza, having been convicted of the offence of armed robbery. He alleges the violation of his rights before domestic courts.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), Charter on Human and Peoples' Rights (Charter") on 21 to the Protocol on 10 February 2006. Furthermore, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations (hereinafter referred to as "ONG"). On 21 November 2019, the Respon African Union Commission an instrument of withdrawal of its Declaration. The Court has held that this withdrawal has no effect on pending and new cases filed before the entry into force of the said withdrawal one (1) year after its deposit which, in the present case, is on 26 March 2021.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 35-39; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540, § 67.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that on 13 June 2004 in Nyamagana District, Mwanza Region, the Applicant, together with three (3) other persons not appearing before this Court, broke into the house of Mr Stanley Chilogo. They stole a television set and a video player belonging to 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)

4. The Applicant first appealed to the High Court sitting at Mwanza which upheld the decision of the Nyamagana District Court on 10 August 2011. His second appeal before the Court of Appeal of Tanzania sitting in Mwanza was also dismissed on 1 August 2013.

B. Alleged violations

5. The Applicant alleges violation of the following rights:

    i. The right to equality before the law and equal protection of the law guaranteed under Article 3(1)(2) of the Charter;
    ii. The right to fair trial guaranteed under Article 7(1)(c) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. On 10 May 2016, the Registry received the Application, which was notified on 7 June 2016 to the Respondent State and subsequently, to the other entities provided for in Rule 42(4) of the Rules on 14 June 2016.

7. The Parties filed their pleadings and exhibits within the time-limits stipulated by the Court.

8. Pleadings were closed on 29 May 2023 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

9. The Applicant prays the Court to:

i. Declare the Application admissible;
ii. Restore justice where it was denied, quash both the conviction and the sentence imposed on him and order his release; and
iii. Make such other orders or order such other measures as it deems appropriate in the circumstances of the case.

10. In his request for reparation, the Applicant prays the Court to:

i. Order his acquittal, under Article 27 of the Protocol, after finding that the Respondent State violated Article 7(1)(c) of the Charter by failing to provide him with a lawyer, both at trial and on appeal; and
ii. Grant him pecuniary reparations, the amount of which shall be fixed taking into account the annual income of citizens, and this, over the period of his detention.

11. The Respondent State prays the Court to:

i. Find that the Court lacks jurisdiction to rule on the Application;
ii. Find and rule that the Application does not meet the admissibility requirements provided for in Article 56(5) of the Charter.
iii. Find and rule that the Application does not meet the admissibility requirements under Article 56(6) of the Charter;
iv. Declare the Application inadmissible;
v. Find and rule that the Respondent State did not violate the rights of the Applicant guaranteed under Article 3(1) (2) of the Charter.
vi. Find and rule that the Respondent State did not violate the rights of the Applicant guaranteed by Article 7(1)(c) of the Charter;

vii. Find and rule that the Application is unfounded and consequently dismiss it.

V. JURISDICTION

12. The Court observes that Article 3 of the Protocol provides as follows:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol, and any other relevant human rights instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

13. Under Rule 49(1) of the Rules of Court "[t]he examination of its jurisdiction [...] in Protocol and these Rules".

14. Based on the above-mentioned provisions, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

15. The Court notes that in the instant case, the Respondent State raises an objection based on lack of material jurisdiction. The Court will thus examine the said objection before considering other aspects of its jurisdiction.

A. Objection to material jurisdiction

16. The Respondent State contends that the jurisdiction of this Court emanates from Article 3 of the Protocol and Rule 29 of the Rules.[3] It contends that the provisions of the afore-mentioned articles do not give the Court jurisdiction to rule as an appellate court.

[3] Rule 26 of the Rules of 2 June 2010.

17. The Respondent State further contends that Article 3 of the Protocol does not empower the Court to exercise appellate jurisdiction and to hear matters, review the judgments of the Court of Appeal, assess the evidence, quash the conviction and sentence, and release the Applicant.

*

18. In his Reply, the Applicant submits that his application is predicated primarily on the fact that he was wrongly convicted and sentenced to thirty (30) years' imprisonment, and that the State, therefore, wrongfully and unlawfully deprived him of his rights.

19. He further contends that for the above-mentioned reasons, and given that the Respondent State in the present case is a State Party to the Charter, the Court has jurisdiction to examine the Application. Furthermore, he submits that insofar as the Application raises substantive human rights issues under the Charter, the Respondent State is bound to respect and protect those rights.

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20. The Court recalls that under Article 3(1) of the Protocol its jurisdiction extends to all "cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the States concern

21. The Court underscores that, for it to assume material jurisdiction, it is sufficient that the Applicant alleges violations of human rights protected by the Charter or by any other human rights instrument ratified by the Respondent State.[4] In the present case, the Applicant alleges violations of Articles 3(1)(2) and 7(1)(c) of the Charter.

[4] *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR, 426, § 28; *Armand Guéhi v United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Kalebi Elisamehe v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 265, § 18.

22. The Court further recalls its established jurisprudence that it is neither a trial court nor an appellate body with respect to decisions of national[5] However, "this does not preclude it from assessing whether domestic proceedings were conducted in accordance with international standards set out in the Charter and other international human rights instruments ratified by the State concerned" [6].The Court would, therefore, not be sitting as an appellate court if it were to consider the Applicant's allegations. In view of the foregoing, the Court holds that it has material jurisdiction to examine the present Application.

23. In view of the foregoing, the Court holds that it has material jurisdiction to examine the present Application.

B. Other aspects of jurisdiction

24. The Court notes that the Respondent State does not contest its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules,[7] it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding to examine the present Application.

25. As regards its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment, that on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of its Declaration made under Article 34(6) of the Protocol. The Court has held that the withdrawal has no retroactive effect, nor does it affect cases pending before the Court prior to the deposit of the instrument of withdrawal of the Declaration, or new cases filed before the withdrawal takes effect one (1) year after the deposit of the instrument of withdrawal, in this case, on 22 November 2020.[8] The instant Application

[5] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[6] *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania*, *supra*, §§ 33.
[7] Formerly Rule 39(1) of the Rules of Court, 2 June 2010.
[8] *Cheusi v. Tanzania*, *supra*, §§ 33-39; see also *Umuhoza v. Rwanda*, *supra*, § 67.

was filed before the Respondent State deposited its instrument of withdrawal and is, therefore, not affected by the said withdrawal. Accordingly, the Court finds that it has personal jurisdiction to examine the present Application.

26. Furthermore, the Court has temporal jurisdiction in respect of the Application insofar as the alleged violations were committed after the Respondent State became a party to the Charter and the Protocol. The alleged violations are also continuing since the Applicant remains convicted in spite of what he considers an unfair procedure.[9]

27. Finally, the Court considers that its territorial jurisdiction is also established since the alleged violations were committed in the territory of the Respondent State.

28. In light of the foregoing, the Court has jurisdiction to hear the instant Application.

VI. ADMISSIBILITY

29. Under Article 6(2) of the Protocol, "The Court shall rul
cases taking into account the provisions of

30. Pursuant to Rule 50(1) of the Rules, "the Court shall
admissibility of an Application filed before it in accordance with Article 56 of
the Charter, Article 6(2) of the Proto

31. Furthermore, Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

Applications filed before the Court shall comply with all of the following conditions:

[9] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 77.

a) Indicate their authors even if the latter request anonymity;
b) Are compatible with the Constitutive Act of the African Union and with the Charter,
c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
d) Are not based exclusively on news disseminated through the mass media,
e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date the Commission is seized with the matter, and
g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

32. The Court notes that the Respondent State raises two objections to the admissibility of the Application. The first objection is based on non-exhaustion of local remedies while the second is based on the fact that the application was not filed within a reasonable time. The Court will thus rule on the said objections before considering other admissibility requirements, if necessary.

A. Objection based on non-exhaustion of local remedies

33. The Respondent State submits that under Rule 66 of its Court of Appeal Rules, as amended, the Applicant had a legal remedy to seek review of the Court of Appeal's decision if he believ grounds, but did not pursue this remedy. Instead of pursuing the available remedy, he prematurely rushed to this Court to seek redress. Furthermore, the Respondent State contends that certain allegations are being raised before the Court for the very first time.

34. The Respondent State states that it acknowledges the importance and significance of the principle of exhaustion of local remedies. It further submits that the African Commission on in *Article 19 v. Eritrea* that, at least, an attempt should be made to exhaust available remedies. It is not enough to merely cast doubt on the merits of exhausting local remedies. It contends that it is incumbent on the Applicant to take all necessary steps to exhaust, or at least attempt to exhaust, local remedies.

35. The Applicant contests the Respondent State's submission that respon all judicial remedies that must be exhausted in respect of the case were pursued, namely, the High Court and the Court of Appeal, which is the highest court of the Respondent State.

36. He further submits that the reasons given by the Respondent State lack merit insofar as there was the opportunity to redress the harm in the present case within the domestic legal system. He further submits that, in any event, the request for review of the Court of Respondent State in its response is not just and that his application meets this admissibility requirement.

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37. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2) (e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies. As regards the remedies to be exhausted, the Court has held that they must be ordinary judicial remedies.[10]

38. Furthermore, in line with its jurisprudence, the Court underscores that in the Respondent State's system, Applicants are not required to pursue the constitutional petition remedy before the High Court, after the Court of

[10] *Laurent Munyandilikirwa v. Republic of Rwanda*, ACtHPR, Application No. 023/2015, Judgment of 2 December 2021, § 74; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 64.

Appeal has been seized of the matter, as this is an extraordinary remedy.[11] In the instant Application, the Court observes that the Court of Appeal ruled on the Applicant's appeal on 1 August 2013. The Applicant is, therefore, deemed to have exhausted local remedies as his Application went through all the echelons of the judicial system up to the Court of Appeal, which is the highest court of the land.[12]

39. In view of the foregoing, the Court holds that the Applicant exhausted local remedies as provided for in Article 56(5) of the Charter and Rule 50(2)(e) of the Rules. It, therefore, dismisses the Respondent St admissibility based on non-exhaustion of local remedies.

B. Objection based on the failure to file the Application within a reasonable time

40. The Respondent State submits that the Application was not filed within reasonable time. According to the Respondent State, the case was settled by the Court of Appeal on 31 July 2013. The Application was filed before this Court on 10 May 2016, that is, after a period of almost twenty (20) months. According to the Respondent State, this period cannot be said to constitute a reasonable time.

41. The Respondent State contends that despite the fact that Rule 50(2)(f) of the Rules does not prescribe the time-limit within which individuals are required to file applications, going by the norms of other regional mechanisms similar to those of the African Union, a period of six (6) months has been considered reasonable time. In this regard it references the decision of the African Commission on *Majuru v. Zimbabwe.*

[11] *Gozbert Henrico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022, § 61; *Mgosi Mwita Makungu v United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 46, *Mohamed Abubakari v United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 66-70; *Thomas v. Tanzania*, *supra*, §§ 63-65.
[12] *Hamis Shaban aka Hamis Ustadh v. United Republic of Tanzania,* ACtHPR, Application No. 026/2015, Judgment of 2 December 2021, § 51*; Abubakari v. Tanzania* (merits), *supra,* § 76.

42. The Applicant, for his part, argues that his application should be approached and considered with particular attention. This is because although the Respondent State deposited the Declaration on 29 March 2010, the Applicant only became aware of the existence of the Court between late 2015 and early 2016, after a lengthy search outside the Respondent State's legal institutions.

43. The Applicant avers that the six (6)-month period should be applied with great caution bearing in mind that he is a prisoner bereft of legal representation. He submits that, the Court, upon examining all applications filed before it by individuals, in particular prisoners detained at Butimba Central Prison in Mwanza, will find that the establishment and existence of the Court was brought to their knowledge between late 2015 and early 2016. Accordingly, he submits that the present Application was filed within reasonable time and should be entertained.

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44. The Court notes that the issue before it is whether the time taken by the Applicant to file the Application is reasonable, within the meaning of Article 56(6) of the Charter read together with Rule 50(2)(f) of the Rules

45. Under Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules, Applications must be filed within a "reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time-limit within which it shall be seized with the matter". Notably, these provisions do not set a time-limit within which cases must be referred to the Court.

46. The Court recalls its jurisprudence that limit for its referral depends on the particular circumstances of each case . . ."[13]. The Court further recalls that some factors taken into account in

[13] *Norbert Zongo and Others v. Burkina Faso* (merits) (24 June 2014) 1 AfCLR 219, § 92. See *Thomas v. Tanzania* (merits), *supra*, § 73.

determining reasonable time are the applicant's situat
incarcerated, being a lay person, not receiving legal aid and being indigent and illiterate.

47. In the present case, the Court notes that local remedies were exhausted on 1 August 2013, when the Court of Appeal Court sitting in Mwanza dismissed the Applicant's appeal. Since the present Application was filed on 10 May 2016, a period of two (2) year, nine (9) months and nine (9) days elapsed after the exhaustion of local remedies. The issue for determination, therefore, is whether the time it took the Applicant to file the Application before the Court is reasonable.

48. The Court notes that the Applicant is a peasant who could not afford legal representation in the proceedings before domestic courts. Given that the Applicant is a lay, incarcerated and indigent person who did not have the benefit of legal support to aptly understand processes before this Court, it should be considered that the period of two (2) year, nine (9) months and nine (9) days that it took him to file the present Application is reasonable.

49. Given the above, the Court finds that the Application was filed within a reasonable time as prescribed under Article 56(6) of the Charter and as restated in Rule 50(2)(f) of the Rules. The Court thus dismisses the Respondent State's objection in this re

C. Other admissibility requirements

50. The Court notes that the Parties do not contest the admissibility of the Application in relation to the requirements of Rule 50(2)(a), (b), (c), (d), and (g) of the Rules. Nevertheless, the Court must ascertain that these requirements are also met.

51. It emerges from the record that the Applicant is clearly identified by name in line with Rule 50(2)(a) of the Rules.

52. The Court also notes that the Application seeks to protect the Applicant rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof is the promotion and protection of huma Furthermore, the Application does not contain any complaint or request that is incompatible with any provision of the said Act. Accordingly, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and, therefore, holds that it meets the requirement of Rule 50(2)(b) of the Rules.

53. Furthermore, the language in which the Application is drafted is neither disparaging nor insulting to the Respondent State or its institutions, as the Application is based on information contained in official documents such as court decisions rendered by national courts. The Court, therefore, holds that the Application complies with the requirements of Rule 50(2)(c) of the Rules.

54. Finally, the Application does not concern a matter that has previously been settled in accordance with the principles of the United Nations Charter, the Constitutive Act of the African Union, the provisions of the Charter or any legal instrument of the African Union. It, therefore, complies with Rule 50(2)(g) of the Rules.

55. In light of all of the foregoing, the Court holds that the instant Application meets all admissibility requirements under Article 56 of the Charter, read in conjunction with Rule 50(2) of the Rules of Court, and accordingly declares it admissible.

VII. MERITS

56. The Applicant alleges that the Respondent State violated i) his rights to equality before the law and equal protection before the law, and ii) his right to free legal assistance.

A. Alleged violation of the right to equality before the law and equal protection of the law

57. The Applicant alleges that the Appeal Court upheld his conviction, notwithstanding the absence of key particulars of the case, in violation of Article 3(1) and (2) of the Charter. He submits that the said court completely failed to take into account the importance of a key piece of evidence in the case, namely the issue of visual identification by PW 1, insofar it was not clearly established that the assailants were identified in circumstances and weather conditions conducive to correct and reliable identification.

58. He further alleges that the Court of Appeal did not consider all of his grounds of appeal, but instead grouped them into seven grounds, thereby depriving him of his rights.

59. The Respondent State asserts that the Court of Appeal convicted the Applicant on the basis of a corroborated and retracted statement and then found that the offence was proven against the Applicant.

60. The Respondent State further submits that the Court of Appeal did address the issues of visual identification. It states that on page 5 of the Court of Appeal's judgment, the said court stat identification was made under adequate conditions and that PW3 knew the Applicant prior to the date of the incident. It also took into account the distance between the witness and the Applicant, and the fact that the witness severed the Applicant's hand. It found that the incident took place over a fairly long period of time, which leaves no doubt about the identification.

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61. Article 3 of the Protocol provides that:

> 1. Every individual shall be equal before the law.
> 2. Every individual shall be entitled to equal protection of the law.

62. The Court recalls that, according to its constant jurisprudence, equal protection of the law requires that the law protects all persons without distinction.[14] It follows that, in order to find a violation of this right, it must be established that the applicant was treated differently from other persons who were in a similar situation.[15]

63. The Court considers that, when a violation of the right to a fair trial is alleged, it is incumbent on the Applicant to prove that the manner in which the competent national courts assessed the evidence reveals an apparent or manifest error which resulted in a miscarriage of justice to the detriment of the party claiming the violation, as opposed to other parties in the same situation.[16]

64. The Court notes that in the present case, and as it emerges from the record, there is no provision in the applicable domestic law providing for different treatment of litigants in similar situations.

65. The Court finds that the domestic courts properly examined the Applic allegations. Notably, the Court of Appeal heard five (5) witnesses during the Applica, and found that his identification was properly conducted and left no doubt that he committed the offence. In any event, there is no evidence on record that the Court of Appeal committed a manifest error that resulted in a denial of justice to the detriment of the Applicant warranting its intervention.

66. Furthermore, the Applicant has not proven that the domestic courts undertook the proceedings in a manner that unduly differentiated between the Applicant and other accused persons in a similar situation to his.

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[14] *Harold Mbalanda Munthali v. Republic of Malawi*, ACtHPR, Application No. 022/2017, Judgment of 23 June 2022 (merits and reparations), § 81; *Action pour la Protection des Droits de l'Homme v. Republic of Côte d'Ivoire* (merits) (18 November 2016) 1 AfCLR 668, § 146.
[15] *Oscar Josiah v. United Republic of Tanzania* (merits) (28 mars 2019) 3 AfCLR 83, § 73; *Makungu V. Tanzania*, *supra*, § 70.
[16] *Josiah v. Tanzania, supra*, § 73.

67. Consequently, the Court dismisses the A
the Respondent State did not violate Article 3(1) and (2) of the Charter.

B. Alleged violation of the right to free legal assistance

68. The Applicant alleges that he was not afforded free legal assistance in the proceedings against him before the domestic courts and that the Respondent State thereby violated Article 7(1)(c) of the Charter.

69. He submits that his grievances relate primarily to the alleged violation of the right to free legal assistance, which is a source of miscarriage of justice not only for the Applicant but also for many Tanzanians. He submits that the Prosecutor of the Respondent State is duty-bound to refrain from employing improper methods to secure wrongful conviction. Rather, he must deploy all legitimate methods to secure a just conviction.

70. The Respondent State submits that the Applicant was afforded this right. It explains that the Applicant commenced his defence on 20 September 2006 and was afforded the opportunity to defend himself. It further contends that the Applicant had the opportunity to apply for legal aid under Section 3 of the Legal Aid (Criminal Proceedings) Act. According to the Respondent State, the Applicant could also have applied for legal aid for his appeal to the Court of Appeal under Part II Rule 31(1) of the Rules of Procedure of 2009 of the Respondent State's Court of

71. The Respondent State points out that Article 13(6) of its Constitution provides for the obligation to ensure equality before the law as well as the right to appeal or the right to pursue any other remedy to challenge the decision of the Court in question. It submits that the Applicant was granted leave to file a late appeal before the Court of Appeal. The Respondent State submits that in the circumstances of the present case, the trial duration of two (2) years and three (3) months constitutes reasonable time.

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72. Under Article 7(1)(c) of the Charter, the right includes "the right to defence, including the right to be assisted by counsel of one's own choosing".

73. In its jurisprudence, the Court has interpreted Article 7(1)(c) of the Charter in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR),[17] and determined that the right to defence includes the right to be provided free legal assistance.[18]

74. The Court also found that anyone charged with a serious offence, punishable by a heavy sentence, is entitled to have legal representation free of charge and without having to apply for it.[19] Furthermore, the obligation to provide free legal assistance to indigent persons facing serious charges and facing a heavy sentence applies both at trial and on appeal.[20]

75. The Court notes that although the Applicant was charged with armed robbery, a serious offence punishable by a minimum sentence of thirty (30) years' imprisonment, there is no indic informed of his right to free legal assistance. Furthermore, the Applicant was not informed that he could access free legal assistance even if he could not afford it. The Court further notes that the Respondent State does not dispute that the Applicant is indigent.

[17] The Respondent State became a State Party to the ICCPR on 11 June 1976.
[18] *Alex Thomas v. United-Republic of Tanzania* (merits), § 114; *Kijiji Isiaga v United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 226, § 78; *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 104.
[19] *Thomas v. Tanzania*, *supra*, § 123; *Isiaga v. Tanzania*, *supra*, § 78; *Onyachi and Another v. Tanzania, supra,* §§ 104 and 106.
[20] *Stephen John Rutakikirwa v. United Republic of Tanzania*, ACtHPR, Application No. 013/2016, Judgment of 24 March 2022 (merits and remedies), § 70; *Thomas v. Tanzania*, *supra*, § 123; *Isiaga v. Tanzania*, *supra*, § 78; *Onyachi and Another v. Tanzania, supra*, § 111.

76. The Court considers that in the circumstances of the case, and in the interests of justice, the Applicant should have been afforded free legal assistance during the trial proceedings and on appeal.

77. In the light of the foregoing, the Court finds 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 failing to afford the Applicant free legal assistance in the proceedings before domestic courts.

VIII. REPARATIONS

78. The Applicant prays the Court to grant him reparations for the violations he suffered, to vacate the conviction and sentence against him, and to order his release.

79. The Respondent State prays the Court to for reparations.

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80. The Court observes that Article 27(1) of the Protocol provides:

> If the Court finds that there has been rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

81. In line with its established jurisprudence, the Court considers that, in order for reparations to be awarded, it must first be established that the Respondent State is internationally responsible for the wrongful act. Secondly, causation should be established between the wrongful act and the harm alleged.[21] Finally, where reparation is granted, it should fully redress the harm suffered.

[21] *Marthine Christian Msuguri v. United Republic of Tanzania*, ACtHPR, Application No. 052/2016, Judgment of 1 December 2022 (merits and reparations), § 120

82. The Court reiterates that the onus is on the Applicant to provide evidence in support of his prayers, in particular with regard to material prejudice.[22] With regard to moral prejudice, the Court has held that the requirement of proof is not strict [23] since prejudice is presumed when violations are established.[24]

83. The Court also recalls that the measures that a State may take to remedy a violation of human rights can include restitution, compensation and victim rehabilitation as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.[25]

84. In the instant case, the Applicant seeks pecuniary (A) and non-pecuniary (B) reparations. The Court will now address each of the two limbs of reparations claimed by the Applicant.

A. Pecuniary Reparations

85. The Applicant seeks pecuniary reparation for the material prejudice which, according to him, the Respondent State's he prays the Court to consider and calculate the amounts to be awarded based on per capital income and the duration of his detention.

86. The Respondent State prays the Court to dismiss the Applicant's request for reparation, including the payment of fair compensation or reparation under

[22]. *Kennedy Gihana and Others v. Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139*; see also Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40*; Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15(d) and *Elisamehe v. Tanzania*, *supra, § 97.*

[23] *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 55; see also *Elisamehe v. Tanzania, supra*, § 97.

[24] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Armand Guehi v. United Republic of Tanzania supra*, § 55; *Lucien Ikili Rashidi v. Tanzania supra*, § 119; *Zongo and Others v. Burkina Faso* (reparations) *supra*, § 55 and *Elisamehe v. Tanzania*, *supra*, § 97.

[25] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20; *Elisamehe v. Tanzania, supra, § 96.*

Article 27 of the Protocol. It also prays the Court to declare that the Applicant continue to serve his sentence.

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87. The Court notes that the Applicant makes a prayer for material damage owing to loss of income without substantiating his claims. The prayer is consequently dismissed.

88. However, the Court found that the Respondent State violated the Applicant's right to free legal assistance by failing to afford the Applicant counsel during the proceedings before domestic courts.

89. The Court notes that the violation found caused the Applicant moral prejudice and, therefore, in the exercise of its judicial discretion, it awards the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian shillings as fair compensation.[26]

B. Non-pecuniary reparations

90. The Application prays that he be set free.

91. The Respondent State prays the Court to requests and to order that the Applicant continue to serve his sentence.

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92. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant's right to legal assistance. Without understating the gravity of this violation, the Court

[26] *Stephen John Rutakikirwa v. United Republic of Tanzania*, ACtHPR, Application No. 013/2016, Judgment of 24 March 2022 (merits and reparations), § 85; *Anaclet Paulo v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 446, § 107; *Minani Evarist v. Tanzania* (merits and reparations) (28 November 2018) 2 AfCLR 402, § 85.

notes that it has not found that the violation is of any relevance in terms of the Applicant's[27] guilt or conviction

93. The Court further considers that in the instant case, there is nothing in the nature of the violation that suggests that keeping the Applicant in prison constitutes a miscarriage of justice or an arbitrary decision. The Applicant also failed to adduce further specific and compelling circumstances warranting his immediate release.[28]

94. In view of the foregoing, the Court dismisses the Appli measure quashing his conviction and ordering his release.

IX. COSTS

95. The Parties did not make any submissions on costs.

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96. Pursuant to Rule 32(2) of the Rules of Court, "unless otherwise d the Court, each party[29] shall bear its own

97. The Court finds that there is nothing in the circumstances of the present case to warrant a departure from that principle. Consequently, the Court orders that each party shall bear its own costs.

X. OPERATIVE PART

[27] *Thomas v. Tanzania, supra*, § 157; *Makungu v. Tanzania, supra*, § 84; *Isiaga v. Tanzania, supra*, § 96, *Guéhi v. Tanzania, supra*, § 164.
[28] *Jibu Amir a.k.a. Mussa and Said Ally a.k.a. Mangaya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 97; *Elisamehe v. Tanzania, supra*, § 112; and *Evarist v. Tanzania, supra*, § 82.
[29] Rule 30 of the Rules of 2 June 2010.

98. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

i. Dismisses the Respondent State's obj
ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objections to the admissibility of the Application.
iv. *Declares* the Application admissible.

On merits

v. *Finds* that the Respondent State did not to equality before the law and equal protection of the law under Article 3(1) and (2) of the Charter;
vi. *Finds* that the Respondent State violat guaranteed by Article 7(1)(c) of the Charter read together with Article 14(3)(d) of the ICCPR, by failing to afford him free legal assistance.

Pecuniary reparations

vii. Awards the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian shillings as reparation for moral prejudice suffered as a result of the violation of his right to free legal assistance.
viii. *Orders* the Respondent State to pay the amount awarded under (vii) above, free from tax, as fair compensation within six (6) months