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JUDGMENT SUMMARY

JOHN LAZARO

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 003/2016

JUDGMENT ON MERITS AND REPARATIONS

7 NOVEMBER 2023

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

Algiers, 7 November 2023: The African Court on Human and Peoples' Rights (the Court), today, delivered a Judgment in the case of *John Lazaro v. United Republic of Tanzania*.

John Lazaro (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 life guaranteed under Article 4; right to dignity guaranteed under Article 5; right to liberty guaranteed under Article 6; and the right to fair trial guaranteed under Article 7, during his trial by the domestic courts.

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

On jurisdiction, the Respondent State raised an objection to the material jurisdiction of the Court on two grounds: first, that Article 3 of the Protocol does not vest the Court with jurisdiction to adjudicate over matters of evidence and procedure decided and concluded by the Court of Appeal - the highest court of the Respondent State; and, second, that the Court lacks jurisdiction to quash and set aside the Applicant's conviction and sentence, and order his release.

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.

Regarding the Respondent State's contention that the Court did not have jurisdiction to consider matters of evidence and procedure decided and concluded by the Court of Appeal, the Court observed that although it does not exercise appellate jurisdiction over the decisions of domestic courts, 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 imply that it is an appellate court.

With regard to the objection relating to setting aside the Applicant's conviction and sentence and ordering his release, the Court reiterated that pursuant to Article 27(1) of the Protocol, it is empowered to make appropriate orders on reparations, if it finds a violation of the rights guaranteed by the Charter or any instrument ratified by the Respondent State. The Court further recalled that it may make an order for release as a measure of restitution, where it finds that the Applicant has demonstrated specific and compelling circumstances warranting such an order.

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 that the Application was not filed within a reasonable time. The Court observed that the Applicant exhausted local remedies on 28 November 2011, when the Court of Appeal dismissed his appeal for lack of merit. The Applicant then filed his Application before the African Court on 4 January 2016. The Court, therefore, assessed that the period in dispute is the one running from 28 November 2011 to 4 January 2016, which is four (4) years, one (1) month and seven (7) days. Taking into consideration the circumstances of the Applicant being a death-row inmate, incarcerated, restricted in his movements with limited access to information and unaware of the Court's procedures, the Court found the time reasonable within

the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules of Court (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 observed 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 declared the Application admissible.

On the merits, with respect to the alleged violation of the right to life, the Court recalled its jurisprudence on the criteria to apply in assessing arbitrariness of a death sentence, that is, (i) whether the death sentence is provided for by law, (ii) whether the sentence was passed by a competent court, and (iii) whether due process was followed in the proceedings leading to the death sentence. The Court established that the death penalty is a punishment provided for under the Respondent State's Penal Code CAP 16. RE.2002, as the mandatory punishment for the offence of murder. It also established that the High Court was the competent Court to try the Applicant for the offences committed as provided for under the Respondent States Criminal Procedure Act as well as its Constitution. With regard to due process being observed, it established that the Applicant was provided with legal representation at all levels of the domestic proceedings; a *voire dire* was held to consider the extra-judicial statement made by the Applicants' co-accused which implicated him; he was provided an opportunity to present his case and cross examine witnesses and informed of his right to appeal, following which he filed the appeal at the Court of Appeal.

The Court nonetheless recalled its jurisprudence that the death penalty as imposed by the courts of the Respondent State in instances of murder, such as in the present Application, does not abide by due process as it does not allow the judicial officer discretion to consider alternative forms of punishment.

The Court, consequently, by a majority of Eight (8) for, and two (2) against, Judges Blaise TCHIKAYA and Dumisa B. NTSEBEZA dissenting, found that the Respondent State had violated the right to life guaranteed under Article 4 of the Charter in relation to the mandatory imposition of the death penalty.

On the allegation of violation of the right to be treated with dignity, the Court observed that the Applicant was convicted and sentenced to death by hanging. In this regard, the Court recalled its jurisprudence that, the implementation of the death penalty by hanging, where such a penalty is permitted, is “inherently degrading” and “encroaches upon dignity in respect of the prohibition of ... cruel, inhuman and degrading treatment”.

The Court therefore, by the same majority, found that the Respondent State has violated the Applicant’s right to be treated with dignity under Article 5 of the Charter in relation to the method of execution of the death penalty, that is, by hanging.

On the allegation of violation of the right to a fair trial, the Applicant raised four (4) complaints as follows: (i) that he was not provided with effective legal representation; (ii) he was convicted on the basis of insufficient evidence; (iii) he was not tried within a reasonable time from the time of his arrest to the time of commencement of his trial and; (iv) he was not provided with interpretation services.

With regard to the first complaint that he was not provided with effective legal representation, the Court recalled its jurisprudence that the right to be defended by counsel of one’s choice is not absolute when counsel is provided through a free legal assistance scheme. It observed that in such a case, the important consideration is whether the accused is provided with effective legal representation rather than whether he or she is allowed to be represented by a lawyer of their own choosing. The Court considered that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes; that the quality of the defence provided is essentially a matter between the client and his representative and; that the State should intervene only where the lawyer’s manifest failure to provide effective representation is brought to its attention. Observing that in the instant case, there was nothing on record to demonstrate that the Applicant was concerned about the type of representation he was receiving, neither did he inform the domestic courts of the alleged shortcomings of his legal representative, the Court found that the Respondent State discharged its obligation to provide the Applicant with effective free legal assistance and therefore, had not violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR with respect to providing effective legal representation.

In relation to the complaint that he was not presumed innocent and that his lawyer did not raise any objection to certain evidentiary issues that were raised during his trial, the Court notes from the record of proceedings that the Applicant was asked to take a plea, to which he

pleaded not guilty, he was allowed to testify on his own defence; exercised his right to cross examine the prosecution witnesses and he was furthermore, notified of the appeal procedure. Regarding the complaint that he was convicted on the basis of questionable testimony due to his identification and a coerced confession from a child, the Court observed that the trial court conducted a preliminary examination to ascertain whether the Applicant's co-accused recorded his 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 noted that, additionally, the Court of Appeal assessed the impact of the inconsistent testimony of the prosecution witnesses, and found that these were not fundamental and as such did not affect the Applicant's guilt and conviction. The Court further noted that the manner in which the domestic courts, particularly the Court of Appeal, assessed the evidence did not reveal any apparent or manifest error, occasioning a miscarriage of justice warranting its intervention and that the conviction was not based on insufficient evidence as alleged by the Applicant. Accordingly, the Court 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, as read jointly with Articles 14(2) and Article 14(3)(e) of the ICCPR, with respect to the evidential basis of the conviction.

On the complaint that the Applicant was not tried within a reasonable time for a period of six (6) years, ten (10) months and twenty-two (22) days before commencement of the trial, the Court observed that there is nothing on the record to show that the Applicant impeded the progress of the investigations before his arraignment at the High Court, his case was not a complex one, there were no multiple applications filed or adjournments requested as observed from the record of proceedings. Moreover, the Court noted, the Respondent State simply and generically explained that "the proceedings during the trial were fair and all requirements were met as envisaged under this provision and that the prosecution ... were conducted in accordance with the governing laws and procedures". The Court, therefore, found that the duration of six (6) years, ten (10) months and twenty-two (22) days cannot be considered as reasonable, and consequently, held that the Respondent State violated the Applicant's right to be tried within a reasonable time as provided for under Article 7(1)(d) of the Charter.

On the complaint regarding the Respondent State's failure to provide interpretation services, the Court notes from the record of proceedings that during the preliminary hearing of the Applicant's case, he was provided with an interpreter and he was also represented by counsel who understood the language. The offence and particulars were read over to both the Applicant who responded in his own language, following which, a plea of not guilty was entered. The Court observed that the Applicant did not object to the proceedings or expressly raise any objections or inform the court or his counsel that he did not understand the language

of the proceedings or demand for an interpreter The Court, therefore, found that the Respondent State did not violate Article 7(1)(c) of the Charter as read together with Article 14(3)(a) of the ICCPR, with regard to the alleged failure to be provided with interpretation services during his trial. It therefore, held that the only right violated by the Respondent State within the rubric of fair trial rights, is the Applicant's right to be tried within a reasonable time as provided for under Article 7(1)(d) of the Charter.

On pecuniary reparations, the Court unanimously, dismissed the Applicant's prayer for material damages; granted the Applicant's prayer for damages for the moral prejudice he suffered and awards him the sum of Tanzania Shillings Five Hundred Thousand (TZS 500,000); ordered the Respondent State to pay the sum awarded, free from tax as fair compensation to be made within six (6) months from the date of notification of this Judgment, failing which it will be required to pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations the Court ordered the Respondent State to immediately, take all necessary steps, within twelve (12) months, to remove the mandatory imposition of the death penalty from its Penal Code as it impinges on the discretion of the judicial officers in imposing sentences, and to publish this Judgment, upon notification thereof, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and to ensure that the Judgment remains accessible for at least one (1) year after the date of such publication.

On implementation and reporting, the Court ordered the Respondent State to submit to it within six (6) months from the date of notification of this judgment, a report on the status of implementation of the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs, the Court ordered each Party shall bear its own costs.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the Dissenting Opinions of Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA were appended to the Judgment.

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/0032016>

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.