



JUDGMENT SUMMARY

HASSAN BUNDALA SWAGA V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 014/2017

JUDGMENT ON MERITS AND REPARATIONS

7 NOVEMBER 2023

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

Algiers, 7 December 2023: The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Hassan Bundala Swaga v. United Republic of Tanzania*.

Hassan Bundala Swaga (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 Butimba Central Prison, having been convicted of rape and sentenced to life imprisonment. 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 denying him the right to be heard and free legal assistance. He sought reparations to redress these alleged violations.

The Court observed in accordance with 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), that, it had to, preliminarily, determine whether it had jurisdiction to hear the Application. In this regard, the Respondent State raised objections to the Court's material and temporal jurisdiction. As regards material jurisdiction, the Respondent State argued that the Court is not empowered to order the release of the Applicant 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. With regards to temporal jurisdiction, the Respondent State argued that the alleged violations are not continuing and that the Applicant is serving a lawful sentence. The Court held that the alleged violations occurred after the Respondent State had ratified the Charter on 21 October 1986, the Protocol on 10 February 2006 and had deposited the Declaration under Article 34(6) of the Protocol on 29 March 2010 and therefore, it had temporal jurisdiction to consider the Application.

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

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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, which is after the Application had been filed at the Court, on 2 October 2017. The Court also held 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(2) 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 3 February 2014 by the District Court of Chato. He appealed against this decision to the High Court, which dismissed his appeal on 30 October 2014. 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 21 February 2016. Therefore, the Court held that the Applicant had exhausted local remedies and fulfilled the requirement of Rule 50(2)(e) of the Rules. As regards the failure to file the Application within a reasonable time, the Respondent State submitted that, it took the Applicant, one (1) year and seven (7) months to bring his claim to the Court, and thus, he did not file his Application within a reasonable time. The Court dismissed this objection, noting first that the Applicant had seized the Court within one (1) year and ten (10) days after exhaustion of local remedies. Furthermore, the Court noted 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 the mass media in fulfilment of Rule 50(2)(d) of the Rules.

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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 denying the Applicant the right to be heard and free legal assistance.

The Applicant alleged that he was denied the right to be heard as the Court of Appeal did not consider all his grounds of appeal, especially the defence of intoxication. The Court, based on the record, found that the Court of Appeal considered all the grounds of appeal that the Applicant had raised. Furthermore, the Court of Appeal noted that the Applicant could not rely on the defence of intoxication as it is not a defence for rape. The Court therefore found that the Respondent State had not violated the Applicant's right to be heard.

Regarding the allegation on the denial of free legal assistance, the Court found that the Applicant had not been provided with free legal assistance during the proceedings at the national courts, even though, he was accused of a serious offence which carried a minimum heavy custodial sentence. The Court held, therefore, that the Applicant's right under Article 7(1)(c) of the Charter had been violated

Having found the violation of the Applicant's right to free legal assistance, the Court observed that while Legal Aid Act 2017 provides for legal aid to accused persons upon certification of a judicial officer, it did not automatically provide for free legal assistance to accused persons charged with serious offences carrying heavy sentences and therefore did not comply with the Court's previous judgments. The Court therefore ordered the Respondent State to take all constitutive and legislative measures to amend the Legal Aid Act 2017 in order to fully align it with the Respondent State's international obligations as reflected in the Charter and the ICCPR.

The Applicant also requested the Court to order his release and his retrial. The Court rejected both requests and noted that it had not decided that the Applicant's conviction was illegally imposed. The Court however, awarded the Applicant Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as fair compensation for the moral prejudice he suffered from the denial of free legal assistance during the proceedings before domestic courts. The Respondent State was required to pay the aforementioned



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amount free from tax within six (6) months of the notification of the judgment and report to the Court on the implementation thereof every six (6) months until full implementation.

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/0142017>

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.