

JUDGMENT SUMMARY

HARUNA JUMA V. THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 034/2016

RULING ON JURISDICTION AND ADMISSIBILITY

7 NOVEMBER 2023

A DECISION BY THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

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

Mr. Haruna JUMA (the Applicant) is a farmer and a national of the United Republic of Tanzania (the Respondent State). At the time the application was filed, he was serving two concurrent sentences of five (5) and thirty (30) years' imprisonment in Butimba Central Prison, in Mwanza, for burglary and armed robbery. He alleges violation of his rights during proceedings before domestic courts.

It emerges from the record that on the night of 9 to 10 February 2000, the Applicant and other persons not appearing before this Court broke into the home of Mr. Bushesha s/O Manyuga located in the village of Ipala, in Nzega District (Tabora Region) and forced him to hand over the sum of Seventy-Five Thousand (75,000) Tanzanian shillings.

In his application, the Applicant alleges that the Respondent State violated his rights guaranteed under Articles 2, 3(1), and (2), and 7(1)(c) of the Charter, as a result of the proceedings before domestic courts.

The Respondent State challenged the Court's jurisdiction, arguing that, contrary to the provisions of Article 3(1) of the Protocol for the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) and Rule 29 of the Rules of Court (the Rules), this Application seeks to request this Court to act as an Appellate Court to examine matters of fact and law previously settled by the Tanzanian Court of Appeal.

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According to the Respondent State, such a review escapes both the mandate and the jurisdiction of the Court.

The Court pointed out that it already established that where allegations of human rights violations relate to the way in which the national courts assessed evidence, it reserves the power to rule whether the said assessment is compatible with the international human rights instruments to which the Respondent State is a party, in particular, the relevant provisions of the Charter. Having noted that the Applicant's allegations concern the violation of his rights guaranteed under Articles 2, 3 and 7 of the Charter, the Court found that it had material jurisdiction to examine the Application and, consequently, dismissed the Respondent State's objection based on of lack of jurisdiction.

With regard to personal jurisdiction, the Court noted that the Respondent State is a party to the Protocol and that, on 29 March 2010, it also deposited the Declaration provided for under Article 34(6) of the said Protocol, by virtue of which it accepted the Court's jurisdiction to receive applications from individuals and Non-Governmental Organizations having observer status before the African Commission on Human and Peoples' Rights. The Court also noted that on 21 November 2019, the Respondent State lodged with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration.

The Court reiterated that, as it decided in *Andrew Ambrose Cheusi v. Tanzania*, the withdrawal of the Declaration deposited in accordance with Article 34(6) of the Protocol has no retroactive effect and has no bearing on cases pending at the time of lodging the instrument of withdrawal, as is the case in the present case. The Court also recalled that the withdrawal of the Declaration takes effect twelve (12) months after the filing of the instrument of withdrawal. As regards the Respondent State, the withdrawal therefore took effect on 21 November 2020. Consequently, the Court found that it had personal jurisdiction to hear the case.

The Court also found that it had temporal and territorial jurisdiction, given that the violations were committed after the entry into force of the Protocol in relation to the Respondent State, and were committed on its territory.

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Regarding the admissibility of the Application, the Respondent State raised two preliminary objections to the admissibility, based on, first, failure to exhaustion local remedies and, second, failure to file the application within a reasonable time after exhaustion of local remedies.

On the first preliminary objection, the Respondent State argued that there were available local remedies which the Applicant could have pursued prior to bringing his case before this Court. According to the Respondent State, the Applicant had the avenue to file an application for review of the Court of Appeal's judgment. The Respondent State asserted that the Applicant also had the possibility of filing an application challenging the constitutionality under the law on the application of fundamental rights and obligations.

The Court dismissed the Respondent State's argument, noting that following the judgment pronounced by the High Court, the Applicant filed an appeal with the Court of Appeal, the highest court in the Respondent State's judicial system. The Court found that the Applicant exhausted local remedies, since the appeal afforded the national court ample opportunity to deal with the allegations raised by the Applicant before this Court. Thus, on the question of remedies in respect of review and constitutional challenge, the Court recalled that it previously decided that these were extraordinary remedies which the Applicant was not obliged to exhaust. The Court therefore found that the Applicant exhausted local remedies in accordance with Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court.

The Respondent State also argued that the Application was inadmissible for being filed out of time.

On this point, the Court recalled that under Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules of Court, there is no fixed time-limit within which a case must be brought before the Court, provided that the time-limit is reasonable according to criteria which are examined on a case-by-case basis in line with the Court's jurisprudence.

In view of these circumstances, the Court found that although it emerges from the record that the Applicant was incarcerated, the Applicant did not justify waiting for six (6) years, two (2) months, and ten (10) days to file the Application. In the absence of such justification, the Court found that

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the Application was not filed within a reasonable time within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules of Court.

Consequently, the Court upheld the Respondent State's objection and found that the Application was not filed within a reasonable time.

The Court decided that each Party shall bear its own costs.

Further information:

Further information on this case, including the full text of the African Court's judgment, is available on the website:

<https://www.african-court.org/cpmt/details-case/0342016>

For all other inquiries, please contact the Registry of the Court by e-mail at this address

registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of Human and Peoples' Rights in Africa. The Court has jurisdiction over all cases and disputes brought before 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 visit our website: www.african-court.org