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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, 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) of the Court[1], Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

John LAZARO

*Represented pro bono by:*

Advocate Achilleus Romward of the East Africa Law Society.

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. Baraka LUVANDA, Ambassador, Head of Legal Unit, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

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

iv. Ms. Nkasori SARAKIKYA, Assistant Director, Human Rights, Principal State Attorney, Ministry Constitutional and Legal Affairs, Attorney Chambers;
v. Mr. Richard J. KILANGA, Senior State Attorney, Ministry Constitutional and Legal Affairs, Attorney General's Chambers;
vi. Mr. Elisha SUKA, Foreign Service Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

After deliberation,

*Renders this Judgment*:

## I. THE PARTIES

1. John Lazaro (hereinafter referred to as "the Applicant") is a national of Tanzania who, at the time of filing this Application, was incarcerated at Butimba Central Prison in Mwanza, Tanzania. He was convicted of murder and sentenced to death on 6 August 2010 and is currently awaiting execution. He alleges violation of his rights in the course of the proceedings before the domestic courts.

2. The Respondent State is the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. It deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter referred to as "the Declaration"). On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal did not have any effect on pending cases as well as new cases filed before

22 November 2020, which is the day on which the withdrawal took effect, being a period one (1) year after its deposit.[2]

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. It emerges from the file that on the night of 31 August 2003 at Bisheshe Village, Karagwe District, the Applicant and four others stormed the residence of his neighbour Clemence Mbasa, tied him up and gagged his wife when she tried to raise an alarm. They forced them to give them money from coffee proceeds which they had recently sold. Thereafter, upon realising that Mr. Mbasa had recognised them, the Applicant killed him by driving a sword through his mouth and dragged him across the room to ensure that he was dead.

4. The gang then turned their attention toward for more money from the coffee proceeds. They cut her abdomen and shoulders with a matchet and tied a rope around her neck. She directed them to the kitchen, where they found the rest of the money. She pretended to be dead as they battered her., after which the gang fled the crime scene. Thereafter, the deceased wife ran outside and raised an alarm, thereby attracting neighbours to come to her rescue. The Applicant was arrested on the same day and subsequently jointly charged with his brother Evaristo Lazaro with the offence of murder. Both brothers pleaded not guilty. The third suspect, Ezra Felix was also arrested but was not charged. The police failed to trace the fourth and fifth suspects.

5. On 10 November 2004, the Applicant and the other accused persons were arraigned before the High Court of Tanzania at Karagwe for plea taking. The trial commenced at the High Court of Bukoba on 22 July 2010 and following

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

a trial within a trial, the extra-judicial statement of Evaristo Lazaro was declared admissible and tendered as evidence.

6. The main trial was concluded on 6 August 2010**.** The Applicant was found guilty of murder and sentenced to death by hanging but his co-accused, Evaristo Lazaro, was acquitted. On 12 August 2010, the Applicant filed an appeal to the Court of Appeal, which was heard on 25 November 2011, and dismissed on 28 November 2011 for lack of merit.

## B. Alleged violations

7. The Applicant alleges that the Respondent State violated his rights protected by the Charter, notably:

   a. Article 3 on the right to equal protection of the law as a result of its failure to provide:
      i. an interpreter during the trials, which amounts to discrimination on the basis of language; and
      ii. effective l e g a l r e p r e s e n t a t i o n o n t h e b a s i
   b. Article 4 on the right to life as a result of its:
      i. imposition of a mandatory death penalty without considering the circumstances of the offender;
      ii. imposition of the death penalty outside the category of cases to which it can be applied; and
      iii. imposition of the death penalty without a fair trial
   c. Article 5 on the right to be treated with dignity as a result of:
      i. the imposition of the death penalty by hanging.
   d. Article 6 on the right to liberty as a result of:
      i. arbitrarily detaining the Applicant
   e. Article 7 on the right to fair trial as a result of its failure to:
      i. provide effective legal representation;
      ii. provide legal representation at all stages of the domestic proceedings;
      iii. provide an interpreter;

iv. properly consult with his lawyer in preparation for the trial and to call key defence witnesses;
v. convict him using sufficient and credible evidence; and
vi. try him within a reasonable time between his arrest and trial.

## III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed on 4 January 2016, and served on the Respondent State on 25 January 2016.

9. The Respondent State filed its Response on 11 July 2016 and the Applicant filed his Reply to the Response on 25 July 2016.

10. On 18 March 2016, the Court issued *suo motu* an Order for provisional measures ordering the Respondent State to stay execution of the sentence pending determination of the Application.

11. Pleadings were closed on 8 March 2018 and the Parties were duly notified.

12. On 16 May 2018, the Court accepted an offer from Cornell University International Human Rights Law Clinic to provide the Applicant with free legal representation, subject to submission of power of attorney or indication of acceptance by the Applicant.

13. On 17 September 2018, the University designated Advocate Jebra Kambole to represent the Applicant. On 5 December 2018, counsel applied to amend the original Application and to file additional evidence, which he attached to the Application. The request was granted by the Court through an order of 13 February 2020 and the amended pleadings were transmitted to the Respondent State on the same date.

14. On 9 April 2021, the University informed the Court that Advocate Jebra Kambole would be replaced by Advocate Achilles Romward of the East Africa Law Society.

15. The Applicant filed pleadings on reparations within the time provided by the Court. Despite several extensions of time**,** the Respondent State did not file its response to the amended Application and on reparations.

16. Pleadings were closed on 14 September 2021 and the Parties were duly notified.

## IV. PRAYERS OF THE PARTIES

17. The Applicant prays the Court to:

a. Make a declaration that the Respondent State violated the Appl rights under Articles 3, 4, 5, 6, and 7 of the African Charter and declare the Application admissible;
b. Make appropriate orders to remedy the violations of the Applicants rights under the Charter;
c. Set aside the death sentence imposed on the Applicant and remove him from death row;
d. amend its penal code and related legislation concerning the death sentence to make it compliant with Article 4 of the African Charter;
e. Release the Applicant from prison; and
f. Order the Respondent State to pay reparations as it deems fit.

18. The Respondent State prays the Court to:

a. Find that it did not violate Article 13(6)(a) and 107(2) of its Constitution;
b. Find that it did not violate Articles 3(2) and 7(1)(c) and (d) of the African Charter;
c. Find that the prosecution proved the cases beyond reasonable doubt;
d. Find that the conviction of the Applicant was based on watertight and credible evidence;
e. Find that the proceedings in original Criminal Session No. 88 of 2004 and the Criminal Appeal No. 230 of 2010 were conducted in accordance with the governing laws and procedures;

f. Find that the sentence meted out on the accused was in compliance with the law;
g. Find that the decision of the High Court was not based on some serious misdirection on point of law;
h. Find that the Court of Appeal is not prejudiced to make review of its own judgment;
i. Order that no reparation be awarded in favour of the Applicant; and
j. Order that costs or the Application be borne by the Applicant.

## V. JURISDICTION

19. Pursuant to Article 3 of the Protocol:

> 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 instruments ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

20. The Court further observes that pursuant conduct a preliminary examination of it the Charter, the Protocol and these Rul

21. In the present Application, the Court observes that the Respondent State raises preliminary objections to the Court's material jurisdiction. The Court will therefore consider these objections before examining other aspects of jurisdiction, if necessary.

[3] Rule 39(1) of the Rules of Court, 2 June 2010.

## A. Objection to material jurisdiction

22. The Respondent State raises an objection to the material jurisdiction of the Court to assess the evidence adduced in the and appeal.

23. The Respondent State submits that the Court has no jurisdiction to act as an appellate Court and as such, it lacks jurisdiction to determine the matter.

24. Furthermore, it avers that the Court has no jurisdiction to quash and set aside the Applicant's conviction and sentence, since both were upheld by the Court of Appeal, its highest Court,. Furthermore, the Respondent State contends that the Court has no power to order the release of the Applicant from prison.

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25. The Applicant asserts that the material jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and other relevant human rights instruments ratified by the state concerned. Citing the case of *Isiaga v. Tanzania*, the Applicant argues that the Court exercises its jurisdiction over an application as long as the subject matter of the application involves alleged violations of rights protected by the Charter or any other international human rights instruments ratified by a Respondent State.

26. The Applicant avers that the subject matter of the Application involves alleged violations of the rights protected by the Charter, namely Articles 3, 4, 5, 6 and 7 and as such, this Court has material jurisdiction to hear the matter.

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27. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine "all cases and disputes submitte

and application of the Charter, th[e] Protocol and any other relevant Human Rights instrument ratified by the State[4]

28. The Court reiterates its established case-law that "although it is not an appellate body with respect to decisions of national courts,[5] this does not preclude it from examining proceedings of the said courts in order to determine whether they were conducted in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned."[6] As such, in the present Application, the Court would not be sitting as an appellate court if it were to examine the allegations made by the Applicant simply because they relate to the assessment of evidentiary issues. Consequently, the objection in this regard is dismissed.

29. With regard to the objection relating to setting aside the Applicant's conviction and sentence and ordering his release, the Court reiterates 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. Furthermore, the Court 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.[7] Consequently, the Court notes that issuing an order for release where the requirements are met is well within its jurisdiction.

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[4] See, for instance, *Cheusi v. Tanzania*, (judgment), *supra*, §§ 37-39; *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18; *Gozbert Henerico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), §§ 38-40.

[5] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

[6] *Mtingwi v. Malawi*, *ibid*; *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.

[7] See *Jibu Amir alias Mussa and Saidi Ally alias Mangaya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 654, § 97; *Elisamehe v. Tanzania*, *supra*, § 112; and *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 82.

30. Accordingly, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to consider the present Application.

## B. Other aspects of jurisdiction

31. The Court notes that its personal, temporal and territorial jurisdiction are not contested by the Respondent State. Nonetheless, in line with Rule 49(1) of the Rules,[8] it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

32. In relation to its personal jurisdiction, the Court recalls as indicated in paragraph 2 of the judgment that the Respondent State is a party to the Protocol and deposited the Declaration under Article 34(6) of the Protocol with the Chairperson of the African Union Commission. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration. The Court recalls its jurisprudence that the withdrawal of the Declaration does not apply retroactively and only takes effect twelve (12) months after the notice of such withdrawal has been deposited, in this case, on 22 November 2020.[9] This Application having been filed before the Respondent State deposited its notice of withdrawal, is thus not affected by it. Consequently, the Court holds that it has personal jurisdiction.

33. In respect of its temporal jurisdiction, the Court notes that all the violations alleged by the Applicant are based on proceedings arising from the decision of the judgments of the High Court and Court of Appeal rendered on 6 August 2010 and 28 November 2011, respectively, that is, after the Respondent State had ratified the Charter and the Protocol, as well as deposited the Declaration. Furthermore, the alleged violations are continuing in nature since the Applicant remains convicted on the basis of what he considers to be an unfair process. Consequently, the Court holds that it has temporal jurisdiction to examine this Application.

[8] Rule 39(1) of Rules of Court, 2 June 2010.
[9] *Cheusi v. Tanzania* (judgment), *supra*, §§ 35-39.

34. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that its territorial jurisdiction is established.

35. In light of all the above, the Court holds that it has jurisdiction to determine the present Application.

## VI. ADMISSIBILITY

36. Pursuant to Article 6(2) of the Proto
admissibility of cases taking into account the provisions of Article 56 of the Charter."

37. In line with Rule 50 of the Rules, "the Court shall
of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these

38. The Court notes that Rule 50(2) of the Rules, which in substance restates the content of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> 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 set by the Court as being the commencement of the time limit within which it shall be 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 the African Union, or the provisions of the Charter.

39. The Respondent State raises an objection to the admissibility of the Application on the ground that the Applicant did not file the Application before this Court within a reasonable time. The Court will first consider this objection before examining other conditions of admissibility, if necessary.

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

40. The Respondent State avers that the decision of the Court of Appeal was rendered on 28 November 2011, whereas this Application was filed before this Court on 7 January 2016, which is 4 years, 1 month and 10 days later. As such, it contends that the Application was not filed within a reasonable time from the date when local remedies were exhausted and, thus, should be struck out.

41. The Respondent State further submits that Rule 40(6) does not prescribe, define or quantify what constitutes reasonable time, however the “period specified in the Charter” is six months in accordance with advancements in international human rights jurisprudence”. Citing the case of *Michael Majuru v. Zimbabwe*, the Respondent State avers that the Applicant does not show any impediments that prevented him from lodging the Application within six months, which is regarded as a reasonable time-limit. It surmises that the conditions for admissibility prescribed in Rule 40(5) and (6) of the Rules of the Court have not been met, therefore this Application should be declared inadmissible and dismissed with costs.

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42. The Applicant contends that Rule 40(6) does not prescribe a specific time-limit for filing an Application before the Court and the Court has held that reasonableness of time is determined on a case-by-case basis. Nevertheless, he exhausted local remedies since his case was heard by the High Court and subsequently by the Court of Appeal, which is the highest court of the land.

43. In this regard, the Applicant cites the Court's jurisprudence in *Norbert Zongo and Others v. Burkina Faso*, where the Court considered seizure of the Court after more than three years as reasonable. Furthermore, he avers that in January 2012,[10] while incarcerated on death row, he filed his "Notice of Motion for Review" and waited patiently for the Court to consider his application for review.[11]

44. The Applicant further avers that by 10 December 2015, after waiting for more than 4 years with no progress made, he could wait no longer and was therefore, left with no choice but to file this Application. The Applicant further submits that the time taken to file this Application before this Court was due to the conduct of the Respondent State and not his own. He cites the Court's decision in *Armand Guehi v. Tanzania,* where it held that the time the Applicant took to file the application was reasonable.

45. He concludes that the time it took him to seize the Court cannot be considered as unreasonable. The Applicant further submits that when he filed the Application before this Court, he was unrepresented and did not possess any legal qualification or knowledge of the Rules of Court but simply did his best to navigate the procedures and to express why his rights were violated.

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[10] He does not provide the exact date.
[11] The Applicant did not submit a copy of the said "Not

46. The Court observes that neither the Charter nor the Rules specify the exact time within which applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules merely provide that applications must be filed " ..within 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".

47. The Court has previously held that "the reasonableness of the time frame for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis".[12] Some of the circumstances that the Court has taken into consideration include: duration of time of the litigation procedure at the domestic courts;[13] imprisonment, indigence, illiteracy and the use of extra-ordinary remedies.[14] Nevertheless, these circumstances must be proven. As the Court has previously pointed out, even for lay, incarcerated or indigent litigants there is a duty to demonstrate how their personal situation prevented them from filing their applications within a reasonable time.[15]

48. The Court notes from the record that the Applicant exhausted local remedies on 28 November 2011, when the Court of Appeal dismissed his appeal for lack of merit. He avers without producing any evidence that he filed a "Notice of Motion for Review" of the Court of Appeal's decision to the same court two (2) months later. The Applicant then filed his Application before the Court on 4 January 2016. The Court, therefore, has to assess whether the period running from 28 November 2011 to 4 January 2016, when the Applicant seized this Court, that is, four (4) years, one (1) month

[12] *The beneficiaries of the late Norbert Zongo Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo v. Republic of Burkina Faso* (merits) (24 June 2014) 1 AfCLR 219, § 92. See also *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.
[13] *Ernest Karatta, Walafried Millinga, Ahmed Kabunga and 1744 Others v. United Republic of Tanzania*, ACtHPR, Application No. 002/2017, Judgment of 30 September 2021 (merits and reparations), § 65.
[14] *Guehi v. Tanzania*, *supra*, § 56; *Werema Wangoko Werema & Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 49; *Alfred Agbesi Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, §§ 83-86.
[15] *Hamisi Mashishanga v. United Republic of Tanzania*, ACtHPR, Application No. 024/2017, Ruling of 1 December 2022 (jurisdiction and admissibility), § 67.

and seven (7) days, is reasonable in terms of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

49. In the instant Application, which is similar to previous cases adjudicated by the Court,[16] it emerges that the Applicant is a death-row inmate, incarcerated, restricted in his movements with limited access to information and unaware of the Court's procedures. He also avers that he tried to use the review procedure before seizing the Court without providing any evidence. In any case, this Court has held that an Applicant using a review procedure, even though an extra-ordinary remedy, should not be penalised for exercising it.[17] Furthermore, the Court held in the *Umalo Mussa v. United Republic of Tanzania*,[18] that filing an application for review of the Court of Appeal's judgment is immaterial to the determination of the reasonableness of time taken to file the Application before this Court.

50. In the circumstances, the Court concludes that the period of four (4) years, one (1) month and seven (7) days that the Applicant took to file his Application is reasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

51. In light of the above, the Court, dismis
to the admissibility of the Application based on failure to file the Application within a reasonable time.

[16] The Court has previously held that four (4) years, nine (9) months and twenty-three (23) days, four (4) years, eight (8) months and thirty (30) days, four (4) years, two (2) months and twenty-three (23) days and four (4) years and thirty-six (36) days, that lay, indigent and incarcerated applicants took to file their applications was reasonable.
[17] *Werema Wangoko v. Tanzania* (merits), § 49; *Alfred Agbesi Woyome v. Republic of Ghana*, ACtHPR, Application No. 001/2017, Judgment of 28 June 2019 (merits), §§ 83-86.
[18] *Umalo Mussa v. United Republic of Tanzania*, ACtHPR, Application No. 031/2016, Judgment of 13 June 2023 (merits and reparations), §§ 47-48.

## B. Other conditions of admissibility

52. The Court notes that there is no contention regarding compliance with the conditions set out in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules. Nonetheless, it must satisfy itself that these conditions have been met.

53. From the records on file, the Court notes that the Applicant has been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules.

54. The Court notes that the Applicant's close seek to protect his 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 human a nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union, thus, the Application fulfils the requirement set out in Rule 50(2)(b) of the Rules.

55. The language used in the Application is not disparaging or insulting to the Respondent State or its institutions, in fulfilment of Rule 50(2)(c) of the Rules.

56. With regard to exhaustion of local remedies, the Court observes that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when that Court rendered its judgment on 28 November 2011. In light of this, the Court considers that the Respondent State had the opportunity to address the violations allegedly arising from the Applicant's trial and

57. The Court notes that the Application is not based exclusively on news disseminated through mass media as it is founded on legal documents, in fulfilment with Rule 50(2)(d) of the Rules.

58. Furthermore, the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter

of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union in fulfilment of Rule 50(2)(g) of the Rules.

59. The Court, therefore, finds that all the admissibility conditions of Rule 50(2) of the Rules have been met and declare the Application admissible.

## VII. MERITS

60. On the merits, the Applicant alleges the violation of his rights protected in the Charter, namely: Article 3(1)(2) on the right to equal protection of the law; Article 4 on the right to life; Article 5 on the right to dignity; Article 6 on the right to liberty; and Article 7 of the Charter on the right to a fair trial.

61. The Court observes that the Applicant alleges similar violations falling under Articles 3 and 7 of the Charter, which relate to the Respondent State's failure to provide interpretation services, effective legal representation, and to guarantee pre-trial detention rights and the right to be heard within a reasonable time. These issues will be considered together under the alleged violation of Article 7 on the right to a fair trial.

62. The Court will therefore examine the allegations, starting with the allegations made under Article 4. As mentioned above, the violations claimed under Article 3 will be considered under Article 7.

### A. Alleged violation of the right to life

63. Citing Article 4 of the Charter, the Applicant contends that every human being is entitled to respect for his life and the integrity of his person and may not be arbitrarily deprived of this right. He alleges that the Respondent State violated his right to life, namely, by:

i. Imposing the mandatory death penalty without considering the circumstances of the offender and the offence;
ii. Imposing the death penalty outside the category of cases to which it can be lawfully applied; and
iii. Imposing the death penalty without a fair trial.

64. On the first ground, the Applicant asserts that the Respondent State imposed the mandatory death penalty, which violates Article 4 of the ICCPR and Article 6 of the Charter. He contends that the mandatory death penalty erases the presumption in favour of life, erases the distinction between the categories of murder and violates the right to an individualised sentencing process. He submits that in all cases involving the possible application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific and aggravating or mitigating elements, must be considered by the sentencing Court, as underlined by the United Nations Human Rights Committee. According to the Applicant, the domestic courts must be given discretion on whether or not to impose the death penalty.[19]

65. The Applicant cites the jurisprudence of the Inter-American Court,[20] national jurisprudence from the Uganda Supreme Court[21] and the High Court of Malawi,[22] where the mitigating factors were considered. He contends that the circumstances in the present case make it abundantly clear that the death penalty is not warranted because the prosecutor failed to demonstrate the Applicant's intent to murder and did not take into account his good character and demonstrable capacity to rehabilitate as well as other social mitigating factors.

[19] *Luboto v. Zambia*, Human Rights Committee, Communication No. 390/1990, (Oct 31, 1995) paragraph 7.2; *Chisanga v. Zambia,* Human Rights Committee, Communication No. 1132/2002, (Oct 18, 2005), § 7.4; *Larranga v. Philipines*, Human Rights Committee, Communication No. 1421/2005, (July 24, 2006) paragraph 7.2; *Carpo v. Philipines*, Human Rights Committee, Communication No. 1077/2002, (9 May 2003), § 8.3.
[20] *Boyce v. Barbados*, Inter-American Court of Human Rights, Judgment of 20 November 2007, Paragraph 50-53
[21] *Attorney General v. Kigula*, §§ 63-64.
[22] *Kafantayeni v. Attorney General*, (High Court), No 12 of 2005 (27 April 2007; *Republic v. Keke* (High Court) No 404 of 2010 (June 18, 2013).

66. On the second ground, i.e., imposing the death penalty outside the category of cases to which it can be lawfully applied, the Applicant submits that for a death sentence to be permissible, it is a necessary (but not sufficient) condition that the offence belongs to those of the most serious nature and that it is one of the rarest of the rare cases. Citing Article 6 of the ICCPR, and the case of *Moise v. The Queen*,[23] he contends, that "the death penalty should be imposed only in the most exceptional and extreme cases of murder". He buttresses his argument by citing international human rights jurisprudence from various Courts.[24]

67. The Applicant further argues that in this particular case, the alleged offence does not fall within the narrow ambit of the category of cases to which the death penalty can be lawfully applied. Furthermore, while the burden of proving otherwise rests with the Respondent State, his circumstances illustrate that he did not deserve the death penalty imposed upon him, so that his right to life was violated. He concludes the deceased was not tortured , or subjected to prolonged trauma or humiliated prior to his death. The Applicant further asserts that the prosecution failed to provide any evidence that the victim's murder was premeditated. Therefore, he submits that there is no reason to think that the Applicant would be a threat to society.

68. On the third ground, i.e., imposing the death penalty without a fair trial, the Applicant avers that the African Commission any reason, the criminal justice system of a state does not, at the time of trial or conviction, meet the criteria for Article 7 of the Charter or if the particular proceedings in which the penalty is imposed have not stringently met the highest standards of fairness, then the subsequent application of the death penalty will be considered a[25]

[23] Eastern Caribbean Court of Appeal, Judgment (15 July 2005), Crim App No. 8 of 2003, para 17.
[24] *Chisanga v. Zambia,* Human Rights Committee, Communication No. 1132/2002, (Oct 18, 2005) § 7.4; *Republic v. Jamuson White* (High Court of Malawi) (Criminal Case No 74 of 2008 (Unreported); *Trimmingham v. The Queen* (Privy Council) paragraph 21; *Kindler v. Canada*, Communication No. 470/1991. 30 July 1993, § 14.3.
[25] General Comment on Article 4, p. 7 and *Int'l Pen and Other (Wiwa) v. Nigeria*, on behalf of African Commission on Human and People's Rights, Comm (Oct. 31, 1998), paragraph 90.

69. The Applicant concludes by relying on the Report of the UN Special Rapporteur on extra-judicial summary or arbitrary executions,[26] which states that fair trial guarantees in death penalty cases must be implemented in all cases without exception or discrimination, as reiterated in the jurisprudence of the Human Right Committee.[27] He avers that the proceedings by which he was sentenced to death did not meet the criteria of Article 7 or even rise to the level of basic fairness. These breaches in turn render the death penalty a violation of his right to life.

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70. The Respondent State responds cumulatively on all the three (3) issues raised by the Applicant. It asserts that Article 7 of the Charter is concerned with whether or not the Applicant was afforded ample opportunity to state his case and to contest the evidence that he considered false, and not whether the domestic courts reached the correct decision.

71. The Respondent State further avers that the mandate of the Court is to determine the fairness of the proceedings as a whole. It submits that all the requirements under Article 7 were met because: the Applicant was presumed innocent, he was provided with legal representation in both trials at the High Court and before the Court of Appeal, he was tried and convicted by an impartial and competent court of law for an act that constituted a legally punishable offence at the time he committed the offence; he was sentenced in line with the laws of the land, and; accorded the opportunity to cross examine the prosecution witnesses.

72. Citing the European Court case of *Gafgen v. Germany*, the Respondent State avers that " As the applicant defence rights and his right not to incriminate himself have likewise been respected, his trial as a whole must be considered unfair". It further argues that "even if there were any irregularities in the procedures", by section 387 of the Criminal

[26] Report of the Special Rapporteur, UN Document/CN.4/2002/74, (Jan 9, 2002), paragraph 119.
[27] *Johnson v. Jamaica* (Human Rights Committee), Communication No. 588/1994, (March 22, 1996), paragraph 8.8-8.9; *Reid v. Jamaica*, (Human Rights Committee), Communication No. 588/1994, (March 22, 1996), paragraph 11.5.

Procedure Act [Cap 20 R.E 2002] and Article 30 (2) of the Constitution of the Republic of Tanzania.

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73. The Court notes that, Article 4 of the C
are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

74. The Court observes that the Applicant has raises three (3) separate grounds relating to the alleged violation of the right to life and the mandatory imposition of the death penalty. These are: (i) failure to consider the circumstances of the offender, (ii) failure to consider the lawfulness of the sentence and (iii) non-compliance with guarantees of due process during the trial, all of which call upon the Court to determine whether the mandatory imposition of the death penalty constitutes an arbitrary deprivation of the right to life.

75. Furthermore, the Court recalls its observation on the global trends towards the abolition of the death penalty, represented, in part, by the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).[28] At the same time, however, it notes that the death penalty remains on the statute books of some States and that no treaty on the abolition of the death penalty has gained universal ratification.[29] The Court further notes that as at 28 June 2023, the Second Optional Protocol to the ICCPR has ninety (90) State Parties out of the one hundred-seventy-three (173) State Parties to the ICCPR.[30]

[28] *Amini Juma v. United Republic of Tanzania*, ACtHPR, Application No.024/2016, Judgment of 30 September 2021 (merits and reparations), § 122 and *Ally Rajabu and Others v. United Republic of Tanzania*, (merits and reparations) (28 November 2019) 1 AfCLR 96. Notably, the Respondent State is not a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights.
[29] For a comprehensive statement on developments in relation to the death penalty, see, United Nations General Assembly Moratorium on the use of the death penalty – A/77/247: Report of the Secretary General on a moratorium on the use of the death penalty, published on 8 August 2022. See https://www.ohchr.org/en/node/103842.
[30] https://indicators.ohchr.org/

76. With regard to the framing of Article 4 of the Charter, the Court observes that, despite a global trend towards the abolition of the death penalty, including the adoption of the Second option Protocol to the international covenant on civil and political Rights, the prohibition of the death sentence in international law is still not absolute.[31]

77. The Court recalls the well-established international human rights case-law on the criteria for assessing arbitrariness of a death sentence,[32] namely, (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 will therefore make its assessment based on these criteria.

78. In relation to the first criterion, which is that the death sentence should be provided by law, the Court notes that the punishment is provided for in Section 197 of the Respondent State's Penal Code CAP 16. RE.2002, as the mandatory punishment for the offence of murder.[33] The said condition is therefore met.

79. Regarding the second criterion, on whether the sentence was passed by a competent Court, this Court observes that the High Court is the competent Court in the Respondent State to deal with offences that carry a death penalty. It has both appellate and original jurisdiction to adjudicate on civil and criminal matters as provided for under Section 3(2)(a) of the Criminal Procedure Act and Article 107(1)(a) of the Tanzania Constitution. As such the sentence was imposed by a competent court. It follows that this second requirement is equally met.

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[31] *Rajabu and Others v. Tanzania*, *supra*, § 96.

[32] See *International Pen and Others (on behalf of Saro-Wiwa) v. Nigeria,* Communications 137/94 139/94, 154/96, 161/97 (2000) AHRLR 212 (ACHPR 1998), §§ 1-10 and, § 103; *Forum of Conscience v. Siena Leone*, Communication 223/98 (2000) 293 (ACHPR 2000), § 20; See Article 6(2), ICCPR; and *Eversley Thompson v. St. Vincent & the Grenadines*, Comm. No. 806/1998, U.N. Doc. CCPR/C70IO/806/1998 (2000) (U.N.H.C.R.), § 8.2; See also *Rajabu and Others v. Tanzania*, *supra*, § 104.

[33] " A person convicted of murder shall be sentenced to

80. In relation to the third criterion on whether due process was followed in the proceedings leading to the pronouncement of the death sentence, the Court notes that according to the Applicant, he was not accorded due process because he was presumed guilty before the trial, he was represented by Counsel who also represented his co-accused whose testimony implicated him in the murder and, further, that his circumstances were not taken into account when imposing the death sentence on him.

81. The Respondent State on its part avers that all due process was accorded the Applicant, he was represented at all levels, a *voire dire* was held to consider the extra-judicial statement made by the Applicants' co-accused, he was tried by an impartial court and had the opportunity to present his case and cross examine witnesses.

82. The Court notes that before the High Court and Court of Appeal, the Applicant was granted free legal representation; he was provided a different lawyer from that of the co-accused to address the concern raised by the lawyer regarding a possible conflict of interest in representing both the accused brothers. The Applicant was therefore able to present his case, cross examine the witnesses who testified and to file an appeal. As such, the Court observes that the processes in domestic courts and the assessment of the evidence do not reveal any miscarriage of justice or manifest error that would amount to a breach of due process.

83. Having said that, the Court notes that it has previously held in the matter of *Rajabu,* that the death penalty as imposed by the courts of the Respondent State in instances of murder, such as is the case 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.[34]

[34] *Rajabu and Others v. Tanzania*, *supra*, § 110.

84. As such, the Court holds that the mandatory imposition of the death penalty by the Respondent State constitutes a violation of the right to life as provided under Article 4 of the Charter.[35]

## B. Alleged violation of the right to be treated with dignity

85. The Applicant contends that the Respondent State violated his right to be treated with dignity by sentencing him to death by hanging in contravention of Article 5 of the Charter. Citing the jurisprudence of African Commission,[36] the Applicant contends that the method of execution causes excessive suffering, which is a cruel, inhumane and degrading punishment.

86. The Applicant also asserts that the prison conditions he endures in Butimba prison amount to torture, contrary to Article 5 of the Charter because the prison is overcrowded, with death row prisoners interacting only with other death row prisoners. Additionally, they are not allowed to take part in sports, classes, training or to receive newspapers.

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87. The Respondent State addressed this allegation generally, by submitting that throughout the trial, the Applicant was treated in accordance with the procedures provided for under its laws. He was charged, convicted and sentenced in accordance with the laws of the land by an impartial and

[35] The United Nations Human Rights Committee has stated that "the mandatory and automatic imposition of the death penalty constitutes an arbitrary deprivation of life in violation of article 6, paragraph 1, of the [ICCPR], in circumstances where capital punishment is imposed without any possibility of taking into account the personal circumstances of the accused or the circumstances surrounding the crime in question". The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "in no case should the law make capital punishment mandatory, regardless of the facts of the case" and the Special Rapporteur, that "the mandatory imposition of the death penalty, which excludes the possibility of imposing a lighter sentence in any circumstances, is incompatible with the prohibition of cruel, inhuman or degrading treatment or punishment". In its resolution 2005/59, adopted on 20 April 2005, the United Nations Human Rights Committee urged States that continue to apply the death penalty to "ensure that ... the death penalty is not imposed ... as a mandatory sentence".

[36] *Interights & Ditshwanelo v. The Republic of Botswana*, African Commission on Huma Rights, Communication No 319/06 (Nov18 2015), § 57.

competent court of law for an act that constituted a legally punishable offence at the time he committed the offence.

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88. Article 5 of the Charter provides as follows:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

89. The Court notes that the Applicant alleges the violation of his right to life, insofar as he was sentenced to death by hanging, a method of execution that constitutes cruel, inhuman and degrading treatment.

90. In this regard, the Court recalls its jurisprudence[37] that, the enforcement of the death penalty by hanging, where such a penalty is permitted, is "inherently degrading" and "encroaches prohibition of … cruel, inhuman and and held that death by hanging constitutes a violation of the right to dignity under Article 5 of the Charter.

91. The Court observes that the Applicant in the instant case faces the same penalty and method of execution, which the Respondent State does not dispute.

92. In the circumstance, the Court finds that the Respondent State violated the right to dignity enshrined in Article 5 of the Charter.

[37] *Rajabu and Others v. Tanzania*, *supra*, §§ 119-120; *Gozbert Henerico v. United Republic of Tanzania,* ACtHPR, Application No 056/2016, Judgment of 10 January 2022 (merits and reparations), § 169.

## C. Alleged violation of the right to fair trial

93. As noted in paragraphs 57 to 61 above, under this right, the Court will examine the violations alleged by the Applicant under the right to a fair trial, the right to equal protection of the law, and the right to liberty. The allegations are as follows:

    i. Failure to provide effective legal representation;
    ii. Conviction on the basis of insufficient evidence;
    iii. Failure to try him within a reasonable time; and
    iv. Failure to provide him with interpretation services.

### i. Failure to provide effective legal representation

94. The Applicant avers that the right to effective legal representation is an integral part of the right to a fair trial, especially when an individual at stake. He submits that due process rights are provided for under Article 7 of the Charter and Article 14(1) of the ICCPR, which establish the right to legal counsel and to adequate time and facilities to prepare his defence and to communicate with a counsel of his choosing. He also avers that Article 14(3)(d), establishes the right "to be tried himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance assigned to him, in any case where the interest of justice so requires and without payment by him in any such case if he does not have sufficien

95. Citing the jurisprudence of the Human Rights Committee,[38] the Applicant argues that it is incumbent upon a state party to ensure that the accused receives legal representation that is effective at all stages of criminal proceedings.

[38] *Hendricks v. Guyana,* Human Rights Committee, Communication No. 838/1998, (Oct 28, 2002, paragraph 6.4; *Brown v. Jamaica*, Human Rights Committee, Communication No. 775/1997, (May 11, 1999, paragraph 6.6; *Aliboeva v. Tajikistan*, Human Rights Committee, Communication No. 985/2001, Judgment, (Nov. 16, 2005), § 6.4; *Salidova v. Tajikistan*, Human Rights Committee, Communication No. 964/2001, Judgment (August 29, 2003), § 7.3, etc.

96. The Applicant contends that in his case, he received inadequate legal representation throughout the various stages of the criminal proceedings. At the pre-hearing stage, he was assigned the same counsel as his brother Evaristo Lazaro, the co-defendant, whose confession served as primary evidence against the Applicant at the trial. This amounted to an egregious, insurmountable conflict of interest. He adds that the fact that he was initially jointly represented by the same lawyer, may have increased the likelihood of his conviction.

97. The Applicant further argues that his Court-appointed counsel failed to adequately represent his interests, in part by not consulting him during the preparation stage. He only met with him at the commencement of the trial, failed to raise key factual and legal issues for review, failed to object to the admission of evidence such as the investigators report and post-mortem report and failed to call two witnesses to testify on his behalf.

98. He argued that had his lawyer met him earlier before his trial, the outcome could have been different. Finally, he alleges that he was not availed free legal assistance at all to assist in his petition for review. Thus, every stage of his defence was critically undermined by failings which either alone or jointly amounted to manifest lack of effective legal representation, which was tantamount to having no legal representation.

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99. The Respondent State reiterates that the proceedings provided a fair trial since all the requirements of Article 7 Charter were complied with. The Respondent State further avers that if there was any misdirection, it would have been addressed by the Court of Appeal when it reviewed the proceedings and judgment of the High Court. In the end, the Court of Appeal determined that there was no need to interfere with the decision of the High Court since the Applicant was properly convicted and thus, no miscarriage of justice was occasioned to the detriment of the Applicant.

100. The Respondent State also contends that the application for review is an extraordinary remedy, which posed no harm to the Applicant, as his matter was conclusively determined by the Court of Appeal. It also contends that there was no delay in hearing the application for review.

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101. Article 7(1) (c) of the Charter provides that:

> 1. Every individual shall have the right to have his cause heard. This comprises: …
>
> (c) The right to defence, including the right to be defended by counsel of his choice.

102. The Court has held that Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, guarantees for anyone charged with a serious criminal offence the right to be automatically assigned a counsel free of charge, where he does not have the means to hire a lawyer, whenever the interests of justice so require.[39]

103. In the matter of *African Commission on Human and* *Libya*, the Court held that "every accused defended by a lawyer, which is at the heart of the notion of a fair trial.[40] The Court has previously considered the issue of effective representation in *Evodius Rutechura v. United Republic of Tanzania*[41] where it held that the right to free legal assistance comprises the right to be defended by counsel. However, the Court emphasizes that the right to be defended by counsel of one's choice is not absolute when couns assistance scheme.[42] In such a case, the important consideration is whether the accused is provided with effective legal representation rather than

[39] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 124.
[40] *African Commission on Human* (merits) (2016) 1 AfCLR 153, § 95. *ights v. L*
[41] *Evodius Rutechura v. United Republic of Tanzania*, ACtHPR, Application No. 004/2016, Judgment of 26 February 2021 (merits and reparations), § 73.
[42] ECHR, *Croissant v. Germany* (1993) App No.13611/89, § 29, *Kamasinski v. Austria* (1989) App No. 9783/82, § 65.

whether he or she is allowed to be represented by a lawyer of their own choosing.[43]

104. The Court considers that, "effective as
aspects.[44] First, defence counsel should not be restricted in the exercise of representing his client. Second, counsel should not deprive a client of effective assistance by failing to provide competent representation that is adequate to ensure a fair trial or, more broadly, a just outcome.[45]

105. The Court has previously held that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes. The quality of the defence provided is essentially a matter between the client and his representative and the State should intervene only where the lawyer's manifest failure to provide ef
attention.[46]

106. This Court notes, with regard to effective legal representation through a free legal assistance scheme, that it is not sufficient for a State to simply provide a legal representative. States must also ensure that those who provide assistance have enough time and facilities to prepare an adequate defence, and to provide robust representation at all stages of the legal process starting from the arrest of the individual for whom such representation is being provided.

107. In the instant case, the Court notes that during the arraignment, the High Court granted the prayer by the Applicar
to assign different counsel to the Applicant and the co-accused, after discovering a conflict of interest between two accused brothers. The Applicant was therefore represented by Advocate Alli Chamani during the

[43] ECHR, *Lagerblom v. Sweden* (2003) App No. 26891/95, §§ 54-56.
[44] HRI/GEN/1/Rev.9 (Vol. I) page 256, §§, 333-335.
[45] ECHR, *Strickland v. Washington*, 466 U.S. 668 336; 686 (1984), 336; *Lafler v. Cooper*, 566. No 10-209 slip. op. (2012) (erroneous advice during plea bargaining).
[46] ECHR, *Vamvakas v. Greece* (no. 2), 2870/11, § 36; *Czekalla v. Portugal*, §§ 65 and 71; *Czekalla v. Portugal*, App. No. 38830/97, ECHR 2002-VIII).

arraignment and by Advocate S.L Katabalwa during the trial. The Court observes that there is nothing on the record to demonstrate that the Respondent State impeded counsel from accessing the Applicant and consulting him on the preparation of his defence, or that the Respondent State denied the designated Counsel adequate time and facilities to enable the Applicant to prepare his defence.

108. The Court has held in its previous jurisprudence that allegations relating to counsel not raising or objecting to certain evidentiary issues in relation to his/her clients defence, should not, in these circumstances, be imputed to the Respondent State.[47] More importantly, there is nothing on the record to demonstrate that the Applicant informed the domestic courts of the alleged shortcomings in the Counsel's conduct Applicant was free to raise with the respective courts his discontent about the manner in which he was represented.

109. In view of the above, the Court finds that the Respondent State discharged its obligation to provide the Applicant with effective free legal assistance and therefore, holds that the Respondent State did not violate Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

**ii. Conviction on the basis of insufficient evidence**

110. The Applicant asserts that the Respondent State had a clear obligation to identify the critical weaknesses in the Applicant and to seek to corroborate the evidence before convicting him. Instead, it convicted him on the basis of questionable testimony regarding his identification and a coerced confession from a child, thus eliminating any presumption of innocence and consequently, violating his right to a fair trial.

111. He submits that Article 7(1)(b) sets out the right to be presumed innocent until proven guilty by a competent court or tribunal. Citing the jurisprudence

[47] *Gozbert Henerico v. United Republic of Tanzania*, ACtHPR, Application No. 056/2016, Judgment of 10 January 2022 (merits and reparations), § 113.

of the European Court, the Applicant argues that a conviction based on unconvincing evidence violates the presumption of innocence and thereby the right to trial. Additionally, that this Court has held in the case of *Abubakari v. Tanzania* and *William v. Tanzania,* that a sentence should be based on strong and credible evidence and a criminal conviction must be "established with certitude".

112. The Applicant alleges that he was convicted on the basis of uncorroborated, unreliable and incomplete evidence, thereby violating his right to presumption of innocence. He argues that the case against him was primarily based on the testimony of one eyewitness, who allegedly identified the Applicant at night with limited visibility and under the stress of traumatic events. Furthermore, the prosecution failed to corroborate or properly evaluate the weak and contradictory identification evidence that was relied upon to identify the Applicant as the victim's assailant. The Applicant also claims that there were discrepancies between the testimonies of the eyewitness and other witnesses as to what the Applicant was wearing, whether he broke into the house of the deceased or went through the open door as well as the words that were allegedly spoken. He avers that any doubts toward the credibility of the eyewitness, should have been resolved in his favour.

113. Another issue raised by the Applicant in this regard, is that the trial court admitted into evidence a statement of the co-accused, his brother Evaristo Lazaro, who was only fifteen years at the time but who later testified that his statement was obtained through coercion as it was forcefully recorded after he had been beaten up by the police with a truncheon, and that he subsequently retracted the same. The Applicant further submits that the Respondent State did not produce any evidence of the murder weapon or prove intent on the part of the Applicant to commit the murder. The Applicant surmises that as such, the Respondent State failed to meet the burden of proof beyond a reasonable doubt, thereby violating his right to presumption of innocence.

114. Finally, the Applicant contends that he was arrested, taken away from the company of his wife and children for 17 years, based on an improper

conviction and sentence, which according to him, negated presumption of innocence."

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115. The Respondent State submits that this Court has no mandate to examine or determine whether or not the prosecution proved its case, rather its function is to ascertain whether the proceedings, considered as a whole, were fair. It is not empowered to substitute its own assessment of the facts and evidence as that is a task for the domestic courts. It avers that Article 7 of the Charter entails examination of fairness during the proceedings at all stages and not evaluation of isolated procedural defects *per se*. It submits that in this case, there is no evidence to indicate that the trial was not fair or that there were any procedural irregularities.

116. The Respondent State specifically asserts that the evidence produced, inevitably led to the inference that it was the Applicant and nobody else who killed the deceased, Clement Mbasa. Furthermore, both the trial court and Court of Appeal assessed the evidence and were satisfied that the Applicant was guilty. It concludes by affirming that the issue of admissibility of evidence in court is an issue which requires that the state party be accorded the margin of appreciation.

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117. The Court notes that Article 7(b) of the Charter provides that:

> "Every individual shall have the right
> comprises:
>
> a. the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force
> b. The right to be presumed innocent until proved guilty by a competent court or tribunal;
> c. The right to defence, including the right to be defended by counsel of his choice;

d. The right to be tried within a reasonable time by an impartial court or tribunal.

118. The Court observes that Article 14(2) of the ICCPR provides that:

> "Everyone charged with a criminal offe
> presumed innocent until proved guilty according to law."

119. The Court further observes that Article 14(3)(e) of the ICCPR, provides that:

> "In the determination against him, a criminal ch
> entitled to the following minimum guarantees, in full equality to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

120. The Court has held that, while it does not substitute national courts when it comes to assessing the particularities of evidence used in domestic proceedings, it retains the power to examine whether the manner in which such evidence was considered is compatible with international human rights norms.[48] One critical concern in that respect is to ensure that the evaluation of facts and evidence by domestic courts was not manifestly arbitrary or did not result in a miscarriage of justice to the detriment of the Applicant.[49]

121. In this regard, the Court notes that the Applicant claims that he was not presumed to be innocent, in violation of the Charter, without adducing any evidence to that effect. However, the court notes that upon arraignment, the Applicant was asked to plead and thereafter tried, that a *voire dire* was conducted to determine the voluntariness of the statement of his co-accused whose testimony led to the Applicant's conviction, that he was

[48] See *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfLCR 599, §§ 26 and 173. See also *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 61; *Oscar Josiah v. United Republic of Tanzania* (merits) (2019) 3 AfCLR 83, §§ 52- 63; *Guehi v. Tanzania*, *supra*, §§ 105-111; *Werema Wangoko Werema and Another v. Tanzania* (merits), §§ 59-64.

[49] See *Abubakari v. Tanzania* (merits), §§ 26 and 173; and *Onyachi and Another v. Tanzania* (merits), § 38.

granted free legal assistance, and that he testified in his own defence and exercised his right of appeal all the way to the Court of Appeal. In light of the foregoing, and in the absence of any cogent evidence to the contrary, the Court finds that his right to be presumed innocent was not violated.

122. In relation to his identification by one eyewitness at night with limited visibility, the Court notes from the record of proceedings that the Applicant was clearly identified by his neighbour and wife of the deceased, as the assailant who had grown up with her sons and used to play with them. She clearly identified three (3) out of the five (5) bandits who ransacked her residence, robbed the couple, and in the process killed her husband and battered her.

123. On 23 July 2010, the High Court, after hearing the four (4) prosecution witnesses and assessing the five (5) exhibits produced, ruled that the evidence adduced had established a *prima facie* case to put the accused persons to their defence. Thereafter, the Court informed the Applicant and his co-accused of their right to give evidence and to call witnesses in their defence as required under Section 293(2)(a) and (b) of the CPA. His lawyer responded that the Applicant would give evidence under oath and had no witnesses to call.

124. Furthermore, the Court observes that at the conclusion of the trial, all the three (3) assessors issued a joint opinion to the effect that the prosecution had proved its case beyond a reasonable doubt, and that it was the Applicant who murdered Mr. Clemence Mbasa and no one else. The assessors based their decision on the fact that the wife of the deceased clearly described the clothes the Applicant was wearing on the fateful day, the attack on her husband, the conversation that transpired during the robbery and the fact that the Applicant knew about the coffee sale, having admitted during the trial that he helped the couple sell the coffee.

125. The Court observes that the testimony on the Applicant's clothes was corroborated by two other witnesses, PW2 and PW3. Furthermore,

evidence on the identity of the Applicant was corroborated by his own brother, the co-accused Evarist Lazaro, who reported in his extra-judicial statement recorded by the Justice of the Peace on 8 September 2003, that it was the Applicant that had convinced him to join him in the robbery. Accordingly, the Court finds that the Applicant's allegation that he was convicted on the basis of insufficient evidence to be unsubstantiated.

126. Regarding the allegation that the conviction was based on inconsistent testimony of the prosecution witnesses, this Court observes that the High Court found that indeed there were some inconsistencies but that they were not fundamental and did not affect the Applicant's guilt and also found that the Applicants defence did not raise any reasonable doubt on the prosecution's case. Furthermore, it found that the Applicant had malice aforethought in killing the deceased. This Court also observes that the High Court's finding regarding the identification of the Applicant was upheld by the Court of Appeal.

127. In light of the foregoing, this Court considers that the manner in which the domestic courts, particularly the Court of Appeal, assessed the evidence does not reveal any apparent or manifest error occasioning a miscarriage of justice and that the conviction was not based on insufficient evidence as alleged by the Applicant.

128. Accordingly, this Court holds that the Respondent State did not violate the Applicant's right to fair trial under Article 7(1)(a) of the African 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.

### iii. Failure to try the Applicant within a reasonable time

129. The Applicant avers that the Respondent State unlawfully detained him over the unduly long period of seven (7) years between his arrest and trial, which he claims is a major breach tantamount to arbitrary detention, resulting in the violation of his right to liberty. He submits that the egregious delay to be

tried was unwarranted particularly because there does not appear to have been any extended police investigations of the crime.

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130. The Respondent State did not specifically respond to this issue but generally submitted that it did not violate Article 7 of the Charter, since the proceedings during the trial were fair, with all requirements met as envisaged under this provision and that the prosecutions in the original Criminal Case No.8 of 2004 and Criminal Appeal No. 230 of 2010, were conducted in accordance with the governing laws and procedures.

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131. The Court notes that Article 7(1)(d) of the Charter provides that everyone has "the right to be tried within a reasonable time by an impartial court or tribunal".

132. The Court notes that in the instant case, the timeframe being contested by the Applicant is the period between his arrest and commencement of the trial. The records on file indicate that after the Applicant was arrested on 31 August 2003, he was charged with the offence of murder. On 10 November 2004, the Applicant and his co-accused entered their plea before the High Court of Tanzania at Karagwe. The trial commenced at the High Court of Bukoba on 22 July 2010, and *a voire dire* (trial within a trial) was held to determine the voluntariness or otherwise of the extra-judicial statement submitted by the Applicant's co-accused Evaristo Lazaro. The Court held that the extra judicial statement was admissible evidence and ordered that it be tendered as evidence. The main trial was concluded on 6 August 2010. On 12 August 2010, the Applicant filed an appeal to the Court of Appeal. The Court of Appeal began considering the appeal on 25 November 2011, and dismissed it for lack of merit on 28 November 2011.

133. The Court observes that the pre-trial period ran from the time the Applicant was arrested on 31 August 2003, to the time the trial commenced on 22 July 2010, this being a period of six (6) years, ten (10) months and twenty-two (22) days. The Court therefore has to determine whether this pre-trial period can be considered as reasonable, taking into account the relevant factors.

134. The Court recalls its jurisprudence that where an Applicant is in custody, the Respondent State bears an obligation to ensure that the matter is handled with due diligence and expeditiously, especially where there are no impediments caused by the Applicant and the delay is not caused by complexities of the case.[50] Furthermore, the Court recalls that various factors are considered in assessing whether justice was dispensed within a reasonable time within the meaning of Article 7(1)(d) of the Charter. These factors include the complexity of the matter, the behaviour of the parties, and that of the judicial authorities, who bear a duty of due diligence in circumstances where severe penalties apply.[51]

135. The Court notes that the Applicant was in pre-trial custody for a period of six (6) years, ten (10) months and twenty-two (22) days. The Court observes that the Respondent State did not provide any reasons as to why the Applicant's trial lasted six (6) years, ten (10) months and twenty-two (22) days after his arrest. It recalls that during proceedings generica 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".

136. The Court also notes 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 or that the case was not a complex one. Furthermore, there were no multiple applications filed or adjournments requested as

[50] See *Guehi v. Tanzania*, *supra*, §§ 122-124. See also *Alex Thomas v. Tanzania* (merits), § 104 *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 507, § 155; and *Norbert Zongo and Others v. Burkina Faso* (merits) (2014) 1 AfCLR 219, §§ 92-97, 152; *Henerico v. Tanzania, supra*, § 86.
[51] *Henerico v. Tanzania, ibid*, § 85.

observed from the record of proceedings. The Court, therefore, finds that the duration of six (6) years, ten (10) months and twenty-two (22) days cannot be considered as reasonable.

137. Consequently, the Court holds that the Respondent State violated the Applicant's right to be tried within a Article 7(1)(d) of the Charter.

**iv. Failure to provide him with interpretation services**

138. The Applicant alleges that the Respondent State failed to provide him with an interpreter at the pre-trial and trial proceedings despite his native language being *Kinyambo*. He avers that the trial was conducted in Kiswahili and English, which created a language barrier, particularly because he did not comprehend English at the time. Notably, he claims that he was unable to engage meaningfully at his trial since he could not understand what the witnesses, judge, assessors were saying and also had difficulty communicating with his counsel. He avers that if an interpreter had been provided, he would have submissions which were to his deviating from his position, and requested that it be disregarded by the Court.

139. Citing Article 14(3)(f) of the ICCPR and several other cases,[52] the Applicant contends that since he did not understand the language of communication used during criminal proceedings, he was entitled to free assistance of an interpreter, even when he did not specifically request for one.[53] He surmises that the right to an interpreter is implicit under the right to a fair trial and extends beyond the criminal trial and to all stages of the legal proceedings including with respect to documentary material and pre-trial proceedings.[54]

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[52] *Bozbey v. Turkmenistan*, Human Rights Committee, Communication No. 1530/2006, (Oct. 27, 2010), § 72; *Sobhraj v. Nepal*, Human Rights Committee, Communication No 1870/2009, (July 27, 2010), § 72.
[53] *Hermi v. Italy*, ECHR, Judgement, Application No. 18114/02 (Oct 18, 2007), § 70.
[54] *Diallo v. Sweden*, ECHR, Judgement, Application No. 13205/07 (Jan 5.2010), § 23; *Luedicke, Belkacem* and *Koç v. Germany*, ECHR, Judgement, Application No 13205/07 (Nov. 28, 1978), § 48.

140. Without responding specifically respond to this allegation, the Respondent State averred generically that the trial of the Applicant was held in compliance with Article 3(2) of the Charter and that the Applicant was not discriminated against in any way. Moreover, he was represented by counsel in both his trials from the High Court to Court of Appeal.

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141. Article 3 of the Charter guarantees the right to equal protection of the law and to equality before the law provides as follows:

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

142. The Court has previously considered the issue of provision of interpretation services and held that "even though Article 7(1)(c) expressly provide for the right to be assisted by an interpreter, it may be interpreted in the light of Article 14(3)(a) of the ICCPR, which provides that:

> "..everyone shall be entitled to … (a) be promptly informed and in detail in a language which he understands of the nature and cause of the charge against him; and (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in [55]

143. It is, therefore, evident from a joint reading of the two provisions that every accused person has the right to an interpreter if they are unable to understand the language in which the proceedings are being conducted. Furthermore, this Court has held that it is practically necessary that where an accused person is represented by Counsel, that the need for interpretation is commensurate to the [56] If an Applicant does not object to the continuance of proceedings in a language other than his own,

[55] *Guehi v. Tanzania*, *supra*, § 73; *Henerico v. Tanzania, supra*, §§ 126-127; *Yahaya Zumo Makame v. United Republic of Tanzania*, ACtHPR, Application No. 023/2016, Judgment of 25 June 2021 (merits and reparations), § 93.
[56] *Makame v. Tanzania*, *ibid*, § 93.

he will be deemed to understand the processes and to have agreed to the manner in which they were being conducted.[57]

144. In the instant case, the Court notes that the record of proceedings during the trial demonstrates that at the preliminary hearing held on 10 November 2004, the Applicant was provided with an interpreter, one Mr A. Joseph, who interpreted the proceedings from English into Kiswahili and vice versa. The Applicant was also represented by Advocate Katabalwa. The offence and its particulars were read over to both the Applicant and co-accused in their "own language" and both pleaded "*Si yo guilty kweli*" in Kiswahili, meaning, "not true". Thereafter, a plea of not guilty was entered. The Court observes that the accused persons entered their plea in Kiswahili and at no point during the proceedings did the Applicant 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 requested for an interpreter.[58]

145. The Court, therefore, finds 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 provide the Applicant with interpretation services during his trial.

146. In view of the foregoing, the Court holds 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.

[57] *Guehi v. Tanzania*, *supra*, § 77.
[58] *Ibid*, § 77.

## VIII. REPARATIONS

147. The Applicant prays the Court to quash both the conviction and sentence, order his release from prison; and compensate him for loss of earnings from his livelihood.

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148. On its part, the Respondent State prays prayers for reparations in their entirety on the grounds that they are baseless since the Court has no jurisdiction to quash and set aside the conviction.

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149. The Court notes that Article 27(1) of Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or repa r a t i o n . ”

150. As it has consistently held, the Court considers that, for reparations to be granted, the Respondent State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim.[59] Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where it is granted, reparation should cover the full damage suffered. Finally, the Applicant bears the onus to justify the claims made.[60]

151. The Court also restates that the measures that a State could take to remedy a violation of human rights can include restitution, compensation and

[59] *Sadick Marwa Kisase v. United Republic of Tanzania*, ACtHPR, Application No. 005/2016, Judgment of 2 December 2021, § 88; *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 13; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19; *Munthali v. Republic of Malawi*, *supra*, § 108.
[60] *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, §§ 20-31; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, §§ 52-59; and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, §§ 27-29.

rehabilitation of the victim, as well as measures to ensure non-repetition of the violations and taking into account the circumstances of each case.[61]

152. The Court reiterates that the onus is on the Applicant to provide evidence to justify his prayers.[62] With regard to moral damages, the Court has held that the requirement of proof is not strict[63] since, it is presumed that there is prejudice caused when violations are established.[64]

153. In the instant case, the Court has found that the Respondent State violated the Applicant's right to be heard within a reasonable time as provided under Article 7(1)(d) of the Charter, due to the delay in commencing his trial. The Court has also found that by the imposition of the mandatory death penalty on the Applicant, the Respondent State violated the Applicant's right to a fair trial as provided under Article 7(1) of the Charter, the right to life as provided under Article 4 of the Charter and the right to dignity, as provided for under Article 5 of the Charter.

154. It is against these findings that the Court will consider the Applicant's prayers for reparation.

## A. Pecuniary reparations

### i. Material prejudice

155. The Applicant prays the Court to grant his wife Sperata John Lazaro and his three children, Anita John Lazaro, Eric John Lazaro and Aviness John Lazaro material reparation. He avers that before his arrest he made approximately Twelve Million, Six Hundred and Fifty Thousand Shilling

[61] *Umuhoza v. Rwanda* (reparations), *ibid*, § 20. See also *Elisamehe v. Tanzania*, *supra*, § 96.
[62] *Kennedy Gihana and Others v. Republic of Rwanda*, ACtHPR, Application No. 017/2015, Judgment of 28 November 2019, § 139; See also *Mtikila v. Tanzania* (reparations), *supra*, § 40; *Konaté v. Burkina Faso* (reparations), § 15(d); and *Elisamehe v. Tanzania*, *supra*, § 97.
[63] *Zongo and Others v. Burkina Faso* (reparations), § 55. See also *Elisamehe v. Tanzania*, *supra*, § 97.
[64] *Rajabu and Others v. Tanzania*, *supra*, § 136; *Guehi v. Tanzania*, *supra*, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania*, ACtHPR, Application No. 009/2015, Judgment of 28 March 2019 (merits and reparations), § 119; *Zongo and Others v. Burkina Faso* (reparations), § 55; and *Elisamehe v. Tanzania*, *ibid*, § 97.

(12,650,000 TZS) per year through carpentry and farming. As a direct result of the Respondent's actions, seventeen has lost (17) years. Consequently, he requests an award of Two Hundred and Fifteen Million, Fifty Thousand Shillings (215,050,000 TZS) for lost income during incarceration. He also avers that his family spent Eleven Thousand Shillings (11,000 TZS) visiting him in prison and prays for a reimbursement of the travel expenses.

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156. The Respondent State prays that the prayer for reparations be dismissed.

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157. The Court recalls that for a claim for material prejudice to be granted, an applicant must show a causal link between the established violation and the loss suffered, and further prove the loss suffered.[65] Furthermore, the Applicant must provide justification for the amounts claimed.[66] The Applicant must also provide acceptable evidence to prove expenses allegedly incurred, such as receipts for the payments.[67]

158. In the instant case, the Court observes that the Applicant does not provide any documentary evidence to support his claim and fails to establish a nexus between the alleged violations and the harm suffered. The Court, therefore, dismisses this prayer.

[65] See *Guehi v. Tanzania*, *supra*, § 181; *Zongo and Others v. Burkina Faso* (reparations), § 62; *Henerico v. Tanzania, supra*, § 180.
[66] *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 81; and *Mtikila v. Tanzania* (reparations), *supra*, § 40.
[67] *Christopher Jonas v. United Republic of Tanzania* (reparations) (25 September 2020) 4 AfCLR 545, § 20; *Guehi v. Tanzania*, *supra*, § 18.

**ii. Moral prejudice suffered by the Applicant**

159. The Applicant avers that he suffered severe hardships as a result of the violation of his rights under the Charter in the course of his arrest and conviction and 16 years of imprisonment, including 9 years on death row. He further argues that the years of incarceration caused him severe distress and anguish, and significantly affected his physical and mental wellbeing. He submits that while in prison, he has been treated for a number of conditions associated with the trauma and distress owing to the violation of his basic human rights. He prays the Court to order reparations be paid to him in such amount as the Court deems fit.

160. The Applicant submits that in the *Konate* case, the Court awarded USD 20,000 as compensation for moral damages to Konate who spent time in prison for 12 years. He therefore submits that having spent over 17 years in prison, he should be granted seventeen times more the amount awarded the Konate. He therefore, prays the Court to grant him USD 340,000 equivalent to TZS 788, 610, 620.

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161. The Respondent State prays that the prayer for reparations be dismissed.

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162. The Court recalls its jurisprudence in *Armand Guehi v. United Republic of Tanzania*, where, due to a delay in the commencement of the Applicant's trial, it held that "in the circumstances of accused of murder and faced the death sentence, such delay is also likely to have caused anguish. The prejudice that ensued warrants compensation, which the Court has discretion to evaluate based on equity"[68]

[68] *Guehi v. Tanzania*, *supra*, § 181.

163. The Court further recalls its jurisprudence in *Ally Rajabu and Others v. United Republic of Tanzania*,[69] in which it observed that:

> [t]he prolonged period of detention awaiting execution causes the sentenced persons to suffer: … severe mental anxiety in addition to other circumstances, including, …: the way in which the sentence was imposed, lack of consideration of the personal characteristics of the accused; the disproportionality between the punishment and the crime committed; … the fact that the judge does not take into consideration the age or mental state of the condemned person; as well as continuous anticipation about what practices their execution may entail.[70]

164. Regarding the Applicants claim that the years of incarceration caused him severe distress and anguish, and significantly affected his physical and mental wellbeing, the Court observes that this was occasioned during his pre-trial detention period of six (6) years, ten (10) months and twenty-two (22) days. The Court is of the view that, had the Applicant been tried in a timelier manner, considering his status as an accused person facing the death penalty, this would have mitigated the mental distress and anguish he experienced. The prejudice that ensued warrants compensation, which the Court has discretion to evaluate based on equity.

165. Given the circumstances of the case, and in light of the Court' s jurisprudence that a judgment in favour of a victim is in itself a form of satisfaction and a reparation for moral damages,[71] the Court in its discretion awards to the Applicant the amount of Tanzanian Shillings Five Hundred Thousand (TZS 500,000) for moral damages suffered.

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[69] *Rajabu and Others v. Tanzania* §§ 149-150.
[70] *Juma v. Tanzania*, *supra*, § 15.
[71] *Mtikila v. Tanzania* (reparations), *supra*, § 45.

## B. Non-pecuniary reparations

### i. Request for release

166. The Applicant prays the Court to set aside the death sentence and order his release from prison. He submits that the restoration of his liberty is the most feasible way in which adequate reparations could be said to have been granted, given the harrowing circumstances of imprisonment he faces.

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167. The Respondent State prays that no reparations be awarded in favour of the Applicant.

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168. The Court considers, with respect to these prayers, that while it does not assume appellate jurisdiction over domestic courts, it has the power to make any order on reparations as it deems appropriate, where it finds that national proceedings were not conducted in line with international standards.[72]

169. Regarding the order to set aside the Ap
that it has not determined whether or not the conviction and sentence of the Applicant was warranted. The Court is rather concerned with whether the procedures in the national courts comply with the provisions of human rights instruments ratified by the Respondent State.[73]

170. The Court recalls its established position that it can only order a release "[I]f an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on

[72] See *Guehi v. Tanzania*, *supra*, § 33; *Evarist v. Tanzania*, *supra*, § 81; *Abubakari v. Tanzania* (merits), *supra*, § 28.
[73] *Ladislaus Onesmo v. United Republic of Tanzania*, ACtHPR, Application No. 047/2016, Judgment of 30 September 2021 (merits and reparation), § 56; *Evarist v. Tanzania*, *supra*, § 54. See also *Ernest Francis Mtingwi v. Tanzania* (jurisdiction), § 14; *Thomas v. Tanzania* (merits), § 130; *Abubakari v. Tanzania* (merits), §§ 25 and 26; *Isiaga v. Tanzania* (merits), *supra*, § 65.

arbitrary considerations and that his continued detention would occasion a miscarriage of justice.[74]

171. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant's right to a fair trial protected under Article 7(1)(d) of the Charter with regard to the right to be tried within a reasonable time for the delay in commencing the trial and has already ordered reparations.

172. Regarding the prayer for release, the Court refers to its established case law where it has held that a measure such as the release of the Applicant can only be ordered in special or compelling circumstances.[75] Furthermore, the procedural violation that underpins the request for a particular relief must have fundamentally affected domestic processes to warrant such a request.[76]

173. In the instant case, as in a similar case regarding a prayer for release, the Court observes that the violations established by the Court did not affect the processes which led to the conviction and sentencing of the Applicant to the extent that he would have been in a different position had the said violations not occurred.[77] Furthermore, the Applicant did not sufficiently demonstrate, nor did the Court establish, that his conviction and sentencing were based on arbitrary considerations and his continued incarceration is unlawful.[78]

174. The Court holds that this prayer lacks merit and is therefore dismissed.

[74] *Evarist v. Tanzania*, *supra*, § 82; See also *Mussa and Mangaya v. Tanzania*, *supra*, § 96; and *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84; and *Elisamehe v. Tanzania*, *supra*, § 111; *Ladislaus Onesmo v. United Republic of Tanzania*, ACtHPR, Application No. 047/2016, Judgment of 30 September 2021, § 93.
[75] See for instance, *Thomas v. Tanzania, supra,* § 157.
[76] *Guehi v. Tanzania*, *supra*, § 164.
[77] *Ibid*, § 165.
[78] See *Evarist v. Tanzania*, *supra*, § 82.

### ii. Guarantees of non-repetition

175. The Applicant prays the Court to order the Respondent State to amend its laws to ensure respect of the right to life under Article 4 of the African Charter by removing the mandatory death sentence for the offence of murder.

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176. The Respondent State prays for dismissal of this prayer.

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177. The Court has previously dealt with this matter and ordered the Respondent State to undertake all necessary measures to remove from its Penal Code the provision for the mandatory imposition of the death sentence.[79] The Court therefore reiterates this order in the instant case.

### iii. Publication of the judgment

178. Though the Applicant does not seek orders for publication of this judgment, pursuant to Article 27 of the Protocol and the inherent powers of the Court, the Court will consider this measure.

179. The Court recalls its position that "a judgment, *per se,* can constitute a sufficient form of reparation for moral damages.[80] Nevertheless, in its previous judgments, the Court has *suo motu* ordered the publication of its judgments where the circumstances so required.[81]

180. The Court observes that, in the present case, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes

[79] *Rajabu and Others v. Tanzania*, § 136; *Guehi v. Tanzania*, *supra*, § 171 (xv-xvi); *Henerico v. Tanzania, supra*, § 217 (xvi).
[80] See *Mtikila v. Tanzania* (reparations), *supra*, § 45.
[81] *Guehi v. Tanzania*, *supra*, § 194; *Mtikila v. Tanzania*, *ibid*, § 45 and 46(5); and *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 98.

beyond the individual case of the Applicant and is systemic in nature. The Court further notes that its finding in this Judgment bears on a supreme right in the Charter, that is, the right to life.

181. In light of the above, the Court orders the publication of this Judgment on the websites of the Judiciary, and the Ministry of Constitutional and Legal Affairs.

## IX. COSTS

182. The Applicant did not make any prayers with regards to costs.

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183. The Respondent State prayed the Court to order the Applicant to pay the costs of this Application.

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184. Rule 32(2) of its Rules of the Court provides that "unless ot
by the Court, each party shall bear its own costs.

185. The Court finds no reason to depart from this provision. Consequently, it rules that each party shall bear its own costs.

## X. OPERATIVE PART

186. For these reasons:

THE COURT,

*Unanimously,*

*On jurisdiction*

i. *Dismisses* the objection to its material jurisdiction;
ii. *Declares* that it has jurisdiction.

*On admissibility*

iii. *Dismisses* the objection to the admissibility of the Application;
iv. *Declares* that the Application is admissible.

*On merits*

*Unanimously*

v. *Holds* that the Respondent State did not violate Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR in respect of the failure to provide effective legal representation;
vi. *Holds* that the Respondent State did not violate 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 regard to his convicting based on insufficient evidence;
vii. *Holds* 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 in respect of the failure to provide the Applicant with interpretation services during his trial;
viii. *Holds* that the Respondent State violated Article 7(1)(d) of the Charter for not putting the Applicant on trial within a reasonable time.

*By a majority of Eight (8) for, and two (2) against, Judges Blaise TCHIKAYA and Dumisa B. NTSEBEZA dissenting on the issue of the death penalty,*

ix. *Holds* that the Respondent State violated the right to life protected under Article 4 of the Charter in relation to the provision in its Penal Code for the mandatory imposition of the death penalty as it removes the discretion of the judicial officer;

*x.* *Holds* that the Respondent State 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.

*Unanimously,*

*On reparations*

*Pecuniary reparations*

xi. *Dismisses* the Applicant's prayer for material reparation;

xii. *Grants* the Applicant's prayer for damages he suffered and awards him the sum of Five Hundred Thousand Tanzania Shillings (TZS 500,000);

xiii. *Orders* the Respondent State to pay the sum awarded under (xiii) above, free from tax as fair compensation, within six (6) months from the date of notification of this Judgment, failing which it shall 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.

*Non-pecuniary reparations*

xiv. *Orders* 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;

xv. *Orders* the Respondent State to publish this Judgment, upon notification thereof, on the websites of the Judiciary, and the