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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 9(2) of the Rules of Court (hereinafter referred to as "the Rules of Court")[1], Judge Imani D. ABOUD, President of the Court, and a Tanzanian national, did not hear the Application.

In the matter of:

HARUNA JUMA

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

represented by:

i. Dr. Boniphace N LUHENDE, *Solicitor General*, Office of the *Solicitor General;*
ii. Ms Sarah D MWAIPOPO, *Deputy Solicitor General*, Office of the *Solicitor General;*
iii. Mr. Moussa MBURA, Director, Civil Litigation, *Principal State Attorney*, Office of the *Solicitor General*;
iv. Mr Hangi M CHANGA, Deputy Director, Human Rights and Electoral Disputes, Office of the *Solicitor General*;
v. Ms Vivian METHOD, *State Attorney*, Office of the *Solicitor General;*
vi. Ms Jacqueline KINYASI, *State Attorney*, Office of the *Solicitor General*; and
vii. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation.

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

After deliberation,

Delivers this Ruling:

I. THE PARTIES

1. Haruna Juma (hereinafter "the Applicant") is a national of the United Republic of Tanzania who, at the time of filing the Application, was serving two concurrent sentences of five (5) and thirty (30) years' imprisonment in Butimba central prison in Mwanza, for burglary and armed robbery, respectively. He alleges the violation of his rights during his trial before the domestic proceedings.

2. The Application is filed against the United Republic of Tanzania (hereinafter "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter "the Charter") on 21 October 1986 and to the Protocol on February 10, 2006. In addition, on 29 March 2010, the Respondent State deposited the Declaration under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") by virtue of which it accepted the Court's jurisdiction to receive applications from individuals and non-governmental organizations (NGOs). On 21 November 2019, the Respondent State deposited with the African Union Commission the instrument of withdrawal of its Declaration. The Court has ruled that this withdrawal had no impact on pending cases, or on new cases brought before the entry into force of the said withdrawal one year after the deposit of the instrument relating thereto, in this case, on 22 November 2020.[2]

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

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

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

4. After the assailants had fled, the victim's wife managed to call for help, prompting the arrival of neighbours. Thus, the victim and the villagers gave chase and were able to catch up with the robbers who still had the weapon and the extorted money in their possession.

5. The Applicant and another person were subsequently charged with burglary and armed robbery at the Nzega District Court in Criminal Case No. 20 of 2000.

6. On 14 May 2001, the Nzega District Court found the Applicant guilty of burglary and armed robbery and sentenced him to two concurrent prison terms of five (5) and thirty (30) years, respectively.

7. The Applicant lodged a first appeal with the High Court at Tabora which, on 15 July 2002, upheld the decision of the District Court of Nzega. He then lodged a second appeal with the Court of Appeal sitting at Mwanza, which, on 16 July 2004, dismissed his appeal and confirmed the judgment of the High Court.

B. Alleged violations

8. The Applicant alleges violation of the following rights:

   i. The right to non-discrimination, protected by Article 2 of the Charter.

ii. The right to equality before the law and equal protection before the law, protected by Article 3(1) and (2).
iii. The right to a fair trial, protected by Article 7(1)(c) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. On 8 June 2016, the Registry received the Application, which was served on the Respondent State on 3 August 2016, and on the other entities stated in Rule 42(4) of the Rules on 8 September 2016.

10. The Parties filed their pleadings on the merits within the time-limits set by the Court. However, the Respondent State did not file its response to the Applicant's submissions on reparations despite several extensions of time.

11. Pleadings were closed on 26 July 2023 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant requests the Court to:

i. Declare the Application admissible;
ii. Restore justice, overturn his conviction and order his release; and
iii. Order any other measures it deems appropriate in the circumstances of the case.

13. In his submissions on reparation, the Applicant prays the Court to:

i. Order his acquittal pursuant to Article 27(1) of the Protocol, after finding that the Respondent State violated Article 7(1)(c) of the Charter by failing to afford him with a lawyer of his own choosing, both at trial and on appeal; and

ii. Grant him pecuniary reparations, the amount of which will be determined according to the annual income of citizens, and this, over the period of his detention.

14. The Respondent State prays the Court to:

i. Find that the Court lacks jurisdiction to rule on the Application;
ii. Find that the Application does not satisfy the admissibility requirements set out in Article 56(5) of the Charter;
iii. Find that the Application has not met the admissibility requirements set out in Article 56(6) of the Charter;
iv. Declare the Application inadmissible;
v. Find that the Respondent State did not violate the Applicant's rights protected under Article 2 of the Charter;
vi. Find that the Respondent State did not violate the Applicant's rights protected under Article 3(1) and (2) of the Charter;
vii. Rule that the Application is unfounded and, consequently, dismiss it; and
viii. Order that the Applicant serve his sentence and that he be paid no reparation.

V. JURISDICTION

15. The Court notes that Article 3 of the Protocol provides as follows:

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

16. Under Rule 49(1) of the Rules, "The Court shall conduct preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules".

17. Based on the aforementioned provisions, the Court must examine its jurisdiction and rule on any objections thereto, if any.

18. The Court notes that, in the present case, the Respondent State raises an objection to material jurisdiction. The Court will rule on this objection before examining other aspects of jurisdiction, if necessary.

A. Objection to material jurisdiction

19. The Respondent State maintains that the jurisdiction of the Court emanates from Article 3 of the Protocol and Rule 29 of its Rules of Procedure.[3]

20. It further contends that the above-mentioned provisions do not empower this Court to rule as an appellate court and, consequently, to examine the present Application, review the judgment of the Court of Appeal, assess the evidence, quash the conviction and sentence, and release the Applicant.

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21. The Applicant submits that the objection be dismissed, arguing that he did not seize this Court as an appellate court, but rather filed an application alleging human rights violations.

22. He further submits that for the above-mentioned reasons, the Court has jurisdiction to examine the Application insofar as the Respondent State in the present case is a State Party to the Charter. He also avers that the Court has jurisdiction insofar as the Application alleges violation of human rights protected by the Charter, to which the Respondent State is a party.

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

23. The Court recalls that, under Article 3(1) of the Protocol, it is has jurisdiction to examine "all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned".

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

25. The Court recalls its established jurisprudence, that it is not an appellate court in respect of decisions handed down by national courts.[5] However, "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or by other human instruments ratified by the States concerned".[6] The Court would therefore not be acting as an appellate court if it were to examine the Applicant's allegations.

26. In view of the above, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to examine the present Application.

B. Other aspects of jurisdiction

27. The Court notes that the Respondent State does not contest its personal, temporal or territorial jurisdiction. Having found that nothing on record indicates that it lacks jurisdiction in these respects, the Court considers that it has:

[4] *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Kalebi Elisamehe v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 265, § 18.
[5] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[6] *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania*, *supra*, §§ 33.

i. Personal jurisdiction insofar as, as indicated in paragraph 2 of this judgment, the Respondent State deposited the Declaration. On 21 November 2019, the Respondent State deposited the instrument of withdrawal of its Declaration made under Article 34(6) of the Protocol. The Court has ruled that this withdrawal had no impact on pending cases, or on new cases brought before the entry into force of the said withdrawal one year after the deposit of the instrument relating thereto, in this case, on 22 November 2020.[7] The present Application, which was lodged before the Respondent State deposited the instrument withdrawing its Declaration, is therefore not affected.

ii. Temporal jurisdiction, insofar as the alleged violations were committed after the Respondent State became a party to the Charter. In addition, the alleged violations are of a continuing nature, as the Applicant's conviction was upheld despite what he considers to be an unfair trial.[8]

iii. Territorial jurisdiction, insofar as the alleged violations were committed on the territory of the Respondent State.

28. In view of the foregoing, the Court holds that it has jurisdiction to hear the present Application.

VI. ADMISSIBILITY

29. Under Article 6(2) of the Protocol, "[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."

[7] *Cheusi v. Tanzania*, *supra*, §§ 33-39; see also *Umuhoza v. Rwanda*, *supra*, § 67
[8] *Norbert Zongo and others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 77.

30. In accordance with rule 50(1) of the Rules of Procedure, “the Court shall ascertain the admissibility of an application filed before it in accordance with Article 56 of the Charter, Article 6 (2) of the Protocol and these Rules.”

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

> Applications filed before the Court shall comply with the following conditions:
>
> a. Indicate their authors, even if the latter Application 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 to 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 period of 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 seised with the matter; and
> g. Do not deal with matters which have been settled by the States involved, in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the provisions of the Charter.

32. The Court notes that the Respondent State raises two objections to admissibility, based on non-exhaustion of local remedies and failure to file the application within a reasonable time. The Court will rule on these objections before examining other conditions of admissibility, if necessary.

A. Objection to admissibility based on failure to exhaust local remedies

33. The Respondent State argues that the Applicant had the opportunity to raise his grievances during the cross-examination of witnesses and as grounds for appeal before the High Court and the Court of Appeal.

34. The Respondent State further argues that the Applicant had a legal remedy available to him in the form of an application for review of the Court of Appeal's decision, under Article 66 of the 1979 Rules of the Court of Appeal, as amended, if he considered that he had sufficient and convincing grounds. The Respondent State asserts that, instead of pursuing the available remedy, the Applicant prematurely seised this Court seeking reparation.

35. The Respondent State also contends that the Applicant could have filed a constitutional petition under the *Basic Rights and Duties Enforcement Act, Cap 3*, to enforce the rights he believes were violated.

36. In support of its contention, the Respondent State cites the decision of the African Commission on Human and Peoples' Rights (the Commission) in *Sharingon and Others v. Tanzania* where the Commission stated that it is necessary to at least attempt to exhaust available remedies and that it is not sufficient to merely question the merit of exhausting local remedies. The Respondent State further submits that it is incumbent on the Applicant to take all necessary steps to exhaust, or at least attempt to exhaust, local remedies.

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37. For his part, the Applicant prays that the objection be dismissed. He contends that all relevant judicial remedies were exhausted in the present case, including before the High Court and the Court of Appeal, which is the highest court of the Respondent State.

38. He further submits that the Respondent State's arguments are unfounded in this case, since the national legal system had an opportunity to address

the issues raised and to repair the harm suffered. Lastly, he submits that it is not necessary to file an application for review of the Court of Appeal's decision as alleged by the Respondent State.

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39. The Court notes that, pursuant to the provisions of Article 56(5) of the Charter, which are restated in Rule 50(2)(e) of the Rules, any application brought before the Court must meet the requirement of exhaustion of local remedies. As regards the remedies to be exhausted, the Court has held that they must be ordinary judicial remedies.[9]

40. Furthermore, in accordance with its case law, the Court emphasizes that, in the judicial system of the Respondent State, the Applicants are not required to file a constitutional petition before the High Court for violation of rights after the Court of Appeal adjudicated on the matter. Furthermore, this remedy has been deemed by this Court to be an extraordinary remedy.[10]

41. The Court observes that, in the instant Application, the Court of Appeal ruled on the Applicant's appeal on 16 July 2004. The Applicant therefore exhausted all local remedies, having passed through the various stages of the judicial system up to the Court of Appeal, which is the highest court of the land.[11]

42. In view of the foregoing, the Court dismisses the objection and holds that the Applicant exhausted local remedies as required by Article 56(5) of the Charter and Rule 50(2)(e) of the Rules.

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

[10] *Gozbert Henrico v. United Republic of Tanzania*, AfCHPR, Application No. 056/2016, Judgment of 10 January 2022, § 61; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 46, *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 66-70; *Thomas v. Tanzania*, *supra*, §§ 63-65.

[11] *Hamis Shaban alias Hamis Ustadh v. United Republic of Tanzania*, AfCHPR, Application No. 026/2015, Judgment of 2 December 2021, § 51; *Abubakari v. Tanzania* (merits), *supra*, § 76.

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

43. The Respondent State asserts that the Application was not lodged within a reasonable time.

44. The Applicant on the other hand did not make any submissions on this objection.

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45. The Court notes that the issue at hand is whether the time taken by the Applicant to file the present Application is reasonable within the meaning of Article 56(6) of the Charter read jointly with Rule 50(2)(f) of the Rules.

46. Under Article 56(6) of the Charter, restated in Rule 50(2)(f) of the Rules of Court, an application is admissible only if it is "submitted within a reasonable period from the time 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 seised with the matter. "

47. The Court notes that these provisions do not set a time-limit within which the case must be filed before it. The Court recalls its jurisprudence to the effect that: "... the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis ...".[12] The Court recalls that in determining whether or not the time-limit for bringing a case before it is reasonable, it takes into account certain factors, including the applicant's situation, the fact that he or she is in prison, is lay, did not benefit from legal assistance, and is indigent or illiterate.

48. The Court has also consistently held that failure to file an application within a reasonable time due to indigence and incarceration must be proven and

[12] *Norbert Zongo and others v. Burkina Faso* (merits) (28 March 2014) 1 AFCLR 219, § 92. See *Thomas v. Tanzania* (merits), *supra*, § 73.

cannot be justified by general assertions or assumptions.[13] The Court has in particular noted that, despite being incarcerated and restricted in his movements, the Applicant had not demonstrated that he was illiterate, lay in matters of law or unaware of the Cou[14]

49. The Court observes that, in the present case, the time-limit for assessing reasonableness should, in principle, be computed from the date of the Court of Appeal's judgment, that is, 16 July 2004. However, the Applicant could not have brought the case before the Court on that date as the Respondent State had not yet deposited the Declaration. The date to be taken into account is, therefore, the date on which the Respondent State filed the said Declaration, that is, 29 March 2010, since it was only from this date that individuals could lodge applications with the Court against the Respondent State. As the Application was filed on 8 June 2016, the time-limit to be taken into account is six (6) years, two (2) months, and ten (10) days. Therefore, the issue to be addressed here is whether such time is reasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

50. The Court notes that, in the present Application, although the record shows that the Applicant was incarcerated, he failed to explain why he waited for six (6) years, two (2) months, and ten (10) days to file the Application. In the absence of such justification, the Court considers, based on its above cited case-law, that the Application was not filed within a reasonable time, within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

51. The Court therefore upholds the Respondent State's objection and considers that the Application was not filed within a reasonable time.

[13] *Abdellah Sospeter Mabomba and Others v. United Republic of Tanzania*, AfCHPR, Application No. 017/2017, Judgment of 22 September 2022, § 51; *Hussein Ally Fundumu v. United Republic of Tanzania*, AfCHPR, Application No. 016/2018, Judgment of 22 September 2022, § 57.
[14] *Mabomba and Others v. Tanzania, supra*, § 52.

C. Other admissibility requirements

52. Having found that the Application does not satisfy the requirements set out in Rule 50(2)(f) of the Rules, the Court deems it unnecessary to rule on the Application's compliance with the admissibility requirements set out in Article 56(1), (2), (3), (4) and (7) of the Charter, as restated in Rule 50(2)(a),(b),(c), (d) and (g) of the Rules, since these requirements are cumulative.[15]

53. In view of the foregoing, the Court finds the Application inadmissible.

VII. COSTS

54. None of the Parties made submissions on costs.

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55. Under article 32(2) of the Rules of Court, "Unless otherwise decided by the Court, each party shall bear its own costs, if any."[16]

56. The Court considers that, in the circumstances, there is no reason to depart from the aforementioned provision. Consequently, it orders each Party to bear its own costs.

VIII. OPERATIVE PART

57. For these reasons,

[15] *Hamisi Mashishanga v. United Republic of Tanzania*, AfCHPR, Application No. 024/2017, Judgment of 1 December 2022 (jurisdiction and admissibility), § 75; *Jean Claude Roger Gombert v. Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018), 2 AfCLR 270, § 61; *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 57.
[16] Article 30 of the Rules of Court of 2 June 2010.