

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

APPLICATION NO. 029/2020

JENESIA PHILEMON

VS

UNITED REPUBLIC OF TANZANIA

CASE SUMMARY

I. THE PARTIES

1. On 22nd September 2020, Mrs. Jenesia Philemon (hereinafter referred to as the “Applicant”) filed an application at the African Court on Human and Peoples’ Rights (hereinafter referred to as the “Court”) against the United Republic of Tanzania (hereinafter referred to as the “Respondent State”).

II. SUBJECT OF THE APPLICATION

A. Facts of the Matter

2. The Applicant states that on the 1 October 2001, she was arrested for the murder of her co-wife, Ms. Claudina Philemon.
3. The victim, Ms. Claudina Philemon, was sleeping in the house with their husband, Mr. Philemon Kazimoto, when on 30 September 2001, the Applicant set the house on fire, resulting in the death of Ms. Claudina.
4. The Applicant was arrested on 1 October 2001 and detained at Belunde Police Station for 5 days and subsequently sent to Kayanga Police Station for police interrogation. Though a charge was filed against her at the High Court of Tanzania on 25 September 2003, almost 2 years from the date of her arrest, trial did not commence until 2009, almost eight (8) years after her initial arrest.
5. The Applicant alleges that she was not afforded access to legal counsel during her interrogation and when charges were brought against except during her trial. Further, that the lawyer appointed to her during her trial did not adduce exculpatory evidence in her defence.
6. She was subsequently convicted by the High Court of Tanzania sitting at Bukona, and sentenced to death by hanging on 8 June 2009.
7. On 13 June 2009, the Applicant appealed her conviction to the Court of Appeal of Tanzania. The Court of Appeal upheld the conviction and sentencing of the Applicant by the lower Court.

8. On 8 November 2011, the Applicant filed an application for the review of the judgment before the Court of Appeal. The Applicant alleges that there are no records to show that the Court of Appeal ever heard or ruled on the said application for review.
9. The Applicant further alleges that she continued to suffer physical and mental trauma whilst on death row until in April of 2020, when the President of the Respondent State commuted her sentence from the death penalty to life imprisonment.
10. The Application was filed before the Court on 22 September 2020.

B. Alleged violations

11. The applicant alleges the violation of the following rights:
 - i. Failure of the Respondent State to protect her from alleged gender-based violence by her husband leading up to her actions that led to the death of her co-wife.
 - ii. Failure of the Respondent State to comply with the provisions of the Charter and the International Covenant on Civil and Political Rights (ICCPR) with regard to fair trial, in particular, the right to have effective representation and to be tried without undue delay.
 - iii. The imposition of mandatory death sentence by the Respondent State without considering her state of mind before the incident, in violation of the right to life under Article 4 of the Charter and Article 6 of the ICCPR.
 - iv. The violation of the rights of the Applicant to freedom from torture and cruel, inhuman or degrading treatment while in detention and in prison custody.

III. PRAYERS OF THE APPLICANT

12. The Applicant prays the court to:

- i. Order the Respondent to compensate her for the violations meted out against her;
- ii. Order that the Applicant be restored to the position that she was in before her trial;
- iii. Order the Respondent State to vacate her conviction and order the retrial of the case with guarantees of fair trial in line with the Charter; or
- iv. In the alternative to the above remedy, order the Respondent State to grant the Applicant a new re-sentencing hearing; and
- v. Order the Respondent State to amend its mandatory death penalty law to ensure respect for life (in compliance with the earlier jurisprudence of the Court (Rajabu § 163)).