

KACHUKURA NSHEKANABO KAKOBEKA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 029/2016

JUDGMENT ON MERITS AND REPARATIONS

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

Algiers, 4 December 2023: The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Kachukura Nshekanabo Kakobeka v. United Republic of Tanzania*.

Kachukura Nshekanabo Kakobeka (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated at Butimba Central Prison, Mwanza, having been tried, convicted and sentenced to death for the offence of murder. The Applicant alleged violation of his rights under the Charter during the proceedings before the national courts.

The Respondent State objected to the jurisdiction of the Court as well as to the admissibility of the Application.

Concerning the Court's jurisdiction, the Respondent State raised an objection to the Court's material jurisdiction. Specifically, the Respondent State questioned the Court's power to sit as an appellate court and, therefore, also claimed that the Court did not have jurisdiction to quash the conviction, set aside sentences and order the release of the Applicant from prison.

With regard to the contention that the Court would be exercising appellate jurisdiction, by examining certain claims which were already determined by the Respondent State's domestic courts, the Court reiterated its position that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. At the same time, however, and even though the Court is not an appellate court vis-à-vis domestic courts, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned. In conducting the aforementioned task, the Court does not thereby become an appellate court. The Court, therefore, dismissed the Respondent State's objection.

Concerning the claim that the Court does not have jurisdiction to grant an order for release, the Court, relying on Article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the

JUDGMENT SUMMARY

Establishment of an African Court on Human and Peoples Rights (the Protocol), concluded that it has jurisdiction to grant different types of reparations, including the release from prison, provided that the alleged violation has been established. For these reasons, the Court dismissed the Respondent State's objection and found that it has material jurisdiction in this Application.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined all aspects of its jurisdiction and held that it had personal, temporal and territorial jurisdiction to determine the Application.

On admissibility, the Respondent State contended that the Application was inadmissible due the Applicant's failure to exhaust local remedies. Regarding this objection, the Court considered that the Applicant exhausted local remedies since the Respondent State's Court of Appeal, the highest judicial organ in the Respondent State, had upheld his conviction and sentence, following proceedings which allegedly violated his rights. The Court also held that the Applicant was not required to have filed a constitutional petition or an application for review of the Court of Appeal's judgment, as these, within the Respondent State's legal system, are extra-ordinary remedies.

For these reasons, the Court dismissed the Respondent State's objection to the admissibility of the Application, and after having satisfied itself that the Application fulfilled all the conditions set out in Article 56 of the Charter as restated in Rule 50(2) of the Rules of Court (Rules), held that the Application was admissible.

The Court then considered whether the Respondent State violated Articles 2, 3, 4, 5, and 7(1) of the Charter. The Court observed that the main contention in the Application centred on Article 7(1) of the Charter, hence, this alleged violation was addressed first.

The Applicant alleged that the courts of the Respondent State convicted him based on doubtful evidence and that the trial and appellate courts did not consider his defence of *alibi*. The Court dismissed the Applicant's allegations and found that the Respondent State had not violated his right to be heard, protected under Article 7(1) of the Charter, as it considered that the Applicant failed to demonstrate and prove that the manner in which the domestic courts evaluated evidence revealed manifest errors requiring this Court's intervention.

The Court held, however, that the Respondent State had violated Article 4 of the Charter due to the mandatory nature of the death penalty imposed on the Applicant, as provided for in Section 197 of its Penal Code, which constitutes an arbitrary deprivation of the right to life.

JUDGMENT SUMMARY

While the Applicant did not make any submissions on the right to dignity, the Court noted from the record that the Applicant was sentenced to death by hanging. The Court, therefore, reiterated its established jurisprudence that hanging as a method of implementing the death constitutes a violation of the right to dignity under Article 5 of the Charter.

The Court further noted that the Applicant had not made any specific submissions nor provided evidence that the Respondent State violated Articles 2 and 3 of the Charter. Accordingly, the Court found that there was no basis to find a violation and held that the Respondent State did not violate Articles 2 and 3 of the Charter.

Having found that the Respondent State violated the Applicant's right to life and to dignity, guaranteed under Articles 4 and 5 of the Charter, the Court ordered the Respondent State to set aside the death sentence imposed on him and to remove him from death row as well as to undertake all necessary measures to organise a rehearing of the Applicant's case on his sentencing through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer. The Court also ordered the Respondent State to remove from its laws the provision for the mandatory imposition of the death sentence and to remove "hanging" from its laws as the method of execution of the death sentence within six (6) months of the notification of this Judgment. Furthermore, the Court ordered the Respondent State to pay the Applicant the sum of Three Hundred Thousand Tanzanian Shillings (TZS 300,000) for moral prejudice. The Court further ordered the Respondent State to publish this judgment within a period of three (3) months from the date of notification on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one (1) year after the date of publication.

Concerning the implementation of these orders, the Court ordered the Respondent State to submit to it within six (6) months from the date of notification of this judgment, a report on the status of implementation of the orders set forth therein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA issued Declarations relating to the finding that the Respondent State violated the Applicant's right to life under Article 4 of the Charter, in relation to the mandatory imposition of the death penalty and that the Respondent State violated the Applicant's right to dignity under Article 5 of the Charter, in relation to the method of implementing the death penalty, that is, by hanging.



Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0292016>

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.