

JUDGMENT SUMMARY

SHABANI MENGE v. UNITED REPUBLIC OF TANZANIA APPLICATION NO. 043/2016 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) today delivered judgment in the case of *Shabani Menge v. United Republic of Tanzania*.

Shabani Menge (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was serving a prison sentence of thirty-five (35) years, having been convicted of armed robbery. He alleged the violation of his rights guaranteed under Article 7(1) of the African Charter on Human and Peoples' Rights (the Charter), on the basis that his conviction was premised on unreliable evidence.

The Respondent State did not participate in the proceedings and the Court, applying Rule 63 of the Rules of Court (the Rules), had to determine whether it could decide the case in the default. The Court observed that Rule 63 of the Rules provides for three (3) conditions that must be satisfied before it can rule in default and these are: first, the notification to the defaulting party, second, the default by one of the parties and, third, a request from one of the parties for a decision in default or in the absence of such a request, the Court acting of its own motion in the interests of justice.

With respect to the notification to the defaulting party, the Court found that the Application was duly served on the Respondent State on 24 August 2016 and subsequently, all the other pleadings filed by the Applicant were transmitted to the Respondent State for the filing of its Response.

As regards the default by one of the parties, the Court found that despite the service of the Application and all other pleadings, the Respondent State failed to file a Response even after being sent four (4) reminders. Furthermore, given that there was no request for it to proceed under Rule 63 of the Rules, the Court decided, of its own motion, to proceed with the default procedure.

The Court then determined whether it had jurisdiction to hear the Application. With respect to its personal jurisdiction, the Court found that this was satisfied, since, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol to the Charter on the Establishment of the African Court on Human and Peoples' Rights (the Protocol) and this Declaration allows individuals and Non-Governmental Organisations to file applications against it as per Article 5(3) of



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the Protocol. The Court further found that the Respondent State's withdrawal of the Declaration, on 21 November 2019, did not affect this Application, as the withdrawal took effect on 22 November 2020, while the application had been filed on 10 February 2016.

The Court also held that it had material jurisdiction as the Applicant had alleged violations of rights protected under the Charter, to which the Respondent State is a Party.

The Court further held that it had temporal jurisdiction because the alleged violations occurred after the Respondent State had ratified the Charter and the Protocol and furthermore, the alleged violations were continuing in nature, since they had not been remedied at the time of filing the Application. Lastly, the Court held that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State which is a Party to the Protocol.

The Court then considered whether the Application was admissible. In this regard, it held that, the Applicant had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules. It also held that the claims made by the Applicant sought to protect his rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union and thus the Application was compatible with Rule 50(2)(b) of the Rules. Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions, in fulfilment of Rule 50(2)(c) of the Rules and that the Application was not based exclusively on news disseminated through the mass media, in fulfilment of Rule 50(2)(d) of the Rules.

The Court also found that the Applicant exhausted local remedies, as required under Rule 50(2)(e) of the Rules, because, after his conviction, he filed appeals to the High Court and then to the Court of Appeal, the highest Court in the Respondent State, which dismissed his appeal on 20 February 2012.

Furthermore, the Court decided that the Application, which was filed (4) years, five (5) months and five (5) days after exhaustion of local remedies, was filed within a reasonable time as the Applicant had been incarcerated, restricted in his movements, with limited access to information and he had also filed for review of the Court of Appeal's decision.

The Court was also satisfied that the case had not been settled 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 and thus satisfied Rule 50(2)(g) of the Rules.



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On the merits, the Court considered whether the Respondent State violated the Applicant's right to a fair trial under Article 7(1) of the Charter. In this regard, the Applicant alleged that the evidence that was relied upon to convict him did not prove his case beyond reasonable doubt. Based on the record, the Court found that the manner in which the national courts arrived at the Applicant's conviction did not disclose any manifest error or miscarriage of justice.

The Court also decided that reparations were not warranted as it did not establish any violation.

Each Party was ordered to bear its own costs.

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/0432016>

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.