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

In the matter of

Shabani MENGE
Self-represented

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; and
iii. Ms Nkasori SARAKIKYA, Director of Human Rights, Ministry of Constitution and Legal Affairs.

After deliberation,

Renders this Judgment:

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

I. THE PARTIES

1. Shabani Menge (hereinafter referred to as "the Applicant") is a national of Tanzania, who at the time of filing the Application, was incarcerated at Butimba Central Prison, having been convicted of armed robbery and sentenced to thirty-five (35) years imprisonment, and a fine of Tanzanian Shillings Two Hundred Thousand (TZS 200,000). He alleges violation of his right to a fair trial in proceedings before national courts.

2. The Application is filed against 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 Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), thro of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited an instrument withdrawing its Declaration with the Chairperson of the African Union Commission. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect, that is, one (1) year after its deposit, which is on 22 November 2020.[2]

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that on 15 May 2004, the Applicant and his friend Thobias Charles attacked fishermen with a *machete* at Musira Island, Lake Victoria, at about 2200hrs, and made away with a boat and a boat engine,

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

the property of Joel Faustin. On 17 May 2004, the Applicant and his friend were arrested.

4. On 20 May 2004, the Applicant and his friend who is not a party to this Application, were charged with armed robbery and convicted on 17 February 2005. On 22 February 2005, they were sentenced to thirty-five (35) years imprisonment each and to pay a fine of Tanzanian Shillings Two-Hundred Thousand (TZS 200,000) as compensation to the victims.

5. On 20 June 2005, the Applicant appealed against his conviction and sentence to the High Court of Tanzania sitting in Bukoba and on 30 May 2007, his appeal was dismissed for lack of merit. He further appealed to the Court of Appeal, which dismissed his appeal on 20 February 2012.

6. On 3 April 2013, the Applicant applied for the review of the Court of Appeal's judgment but the decision on the review was pending at the time of filing the present Application.

B. Alleged violations

7. The Applicant alleges the violation of his right to a fair trial, that, his conviction was based on unreliable evidence.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed on 25 July 2016 and served on the Respondent State on 24 August 2016. On 8 September 2016, the Application was transmitted to the entities listed under Rule 42(4) of the Rules.[3]

9. On 28 June 2018, the Court requested the Applicant to file submissions on reparations which he did on 6 August 2018 and they were transmitted to the Respondent State on 18 September 2018.

[3] Rule 35(3) of the Rules of Court, 2 June 2010.

10. The Respondent State was reminded to file its Response to the Application on 19 November 2018, 4 February 2019, 6 February 2019 and 15 April 2019. However, the Respondent State did not file any Response.

11. Pleadings were closed on 28 May 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to:

    i. Set aside the decision of the Court of Appeal and order his release;
    ii. Order payment of reparations for the time spent in prison; and
    iii. Order any other relief that the Court deems fit.

13. The Respondent State did not participate in the present proceedings and therefore did not make any prayers.

V. ON THE DEFAULT OF THE RESPONDENT STATE

14. Rule 63(1) of the Rules of Court provides that:

> Whenever a party does not appear before the Court or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

15. The Court notes that the afore-mentioned Rule 63(1) of the Rules sets out three conditions under which it may give judgment in default, namely: i) notification to the Respondent State of both the application and the documents on file; ii) default of the Respondent State; and iii) application by

the other party or the Court's decision to give a judgment in default on its own motion.

16. With regards to the first condition, namely, notification of the Respondent State, the Court recalls that the Application was served on the Respondent State on 24 August 2016. Furthermore, from the date of service of the Application on the Respondent State to the date of the close of pleadings, the Registry transmitted all the pleadings submitted by the Applicant to the Respondent State. In this regard, the Court also notes from the record, the proof of delivery of those notifications. The Court thus finds that the Respondent State was duly notified.

17. In respect of the second condition, the Court notes that, in the notice of service of the Application, the Respondent State, was granted sixty (60) days to file its Response. However, it failed to do so within the time allocated. The Court further sent four (4) reminders to the Respondent State on the following dates: 19 November 2018, 4 February 2019, 6 February 2019 and 15 April 2019. Notwithstanding these reminders, the Respondent State did not file its Response. The Court thus finds that the Respondent State has failed to defend its case within the prescribed time.

18. Finally, on the third condition, the Court notes that it can render judgment in default either *suo motu* or upon request of the other party. The Applicant having not requested for a default judgment, the Court decides *suo motu*, for the proper administration of justice to render this judgment in default.

19. The required conditions having thus been fulfilled, the Court renders this judgment in default.[4]

[4] *African Commission on Human and Peoples' Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-42.

VI. JURISDICTION

20. 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.

21. In accordance with Rule 49(1) of the Rules "[t]he Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules".

22. The Court notes that there is no objection to its jurisdiction and nothing on the record indicates that it lacks jurisdiction. Nevertheless, it is obligated to determine if it has jurisdiction to consider the Application.

23. With regard to its personal jurisdiction, the Court notes, as earlier stated in this judgment, that the Respondent State is a party to the Protocol**,** and that, on 29 March 2010, it deposited the Declaration with the African Union Commission. However, on 21 November 2019, it deposited an instrument withdrawing its Declaration. In accordance with the Court's jurisprudence, the withdrawal of the Declaration does not apply retroactively. It only takes effect one (1) year after the notice of such withdrawal has been deposited. In this case, the effective date was 22 November 2020.[5] In view of the above, the Court holds that it has personal jurisdiction as the withdrawal does not affect the present Application which was filed on 25 July 2016.

24. As regards its material jurisdiction, the Court notes that the Applicant alleges violation of Article 7(1) of the Charter to which the Respondent State is a party. Therefore, the Court's material jurisdiction is established.

[5] *Cheusi v. Tanzania* (judgment), *supra,* §§ 37-39.

25. With respect to its temporal jurisdiction, the Court notes that the alleged violations occurred after the Respondent State ratified the Charter and the Protocol and continued after the Respondent State had deposited the Declaration under Article 34(6) of the Protocol. Consequently, the Court finds that it has temporal jurisdiction to consider the Application.[6]

26. The Court further finds that it has territorial jurisdiction as the facts of the case occurred on the Respondent State's territory.

27. From the foregoing, the Court finds that it has jurisdiction to hear the instant case.

VII. ADMISSIBILITY

28. Article 6(2) of the Protocol provides that, "the Court shall ascertain the admissibility of cases taking into account the provisions of article 56 of the Charter." Pursuant to[7] "[R]ule 50(1) of the Rules of 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."

29. Rule 50(2) of the Rules,[8] which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all the following conditions:
>
> a. disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b. comply with the Constitutive Act of the African Union and the Charter;

[6] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77. *LA LIDHO, LE MIDH, LA FIDH & others v. Republic of Côte D'Ivoire,* ACtHPR, Application No. 041/2016, Judgment of 5 September 2023 §§ 58.
[7] Rule 39(1), Rules of Court, 2 June 2010.
[8] Rule 40, Rules of Court, 2 June 2010.

c. not contain any disparaging or insulting language;
d. not be based exclusively on news disseminated through the mass media;
e. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
f. be filed 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. Not raise any matter or issues previously 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."

30. The Court notes that the conditions of admissibility set out in Rule 50(2) of the Rules are not in contention between the Parties, as the Respondent State did not to take part in the present proceedings. However, pursuant to Rule 50(1) of the Rules, the Court is required to determine if the Application fulfils all the admissibility requirements as set out in Rule 50(2).

31. The Court observes that the Applicant has indicated his identity, and holds that the condition set out in Rule 50(2)(a) of the Rules has been met.

32. The Court notes that the claims made by the Applicant 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 stated in Article 3(h) is the promotion and protection of human and peoples' rights. The Court therefore considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and thus holds that it meets the requirement of Rule 50(2)(b) of the Rules.

33. The Court further notes that the Application does not contain any disparaging or insulting language with regard to the Respondent State, its

institutions and the African Union, which makes it consistent with the requirement of Rule 50(2)(c) of the Rules.

34. With respect to the requirement set out under Rule 50(2)(d) of the Rules, the Court notes that the Application is not exclusively based on news disseminated through the mass media. The Applicant mainly relies on documents from the proceedings before national courts, and thus the Application complies with Rule 50(2)(d) of the Rules.

35. With regard to the requirement under Rule 50(2)(e) of the Rules on exhaustion of local remedies, the Court reiterates its established case law that "the local remedies that must be exhausted, unless they are unavailable, ineffective and insufficient or the proceedings are unduly prolonged."[9] ordinary judicial remedies[10]

36. In the instant case, the Court notes from the record that the Applicant having been convicted and sentenced at the District Court of Bukoba filed an appeal against both to the High Court, which dismissed his appeal on 30 May 2007. He then appealed to the Court of Appeal of Tanzania, the highest judicial organ of the Respondent State, which on 20 February 2012, upheld the judgment of the High Court. Consequently, the Applicant has exhausted all the available domestic remedies and thus, the Application complies with Rule 50(2)(e) of the Rules.

37. With regard to Rule 50(2)(f) of the Rules, the Court notes that the Rule requires an application to be filed within: "a reasonable time from which 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."

[9] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 64. *See also Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 64; and *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 95.

[10] *Lohé Issa Konaté v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 77. *See also Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, § 40.

38. In the instant Application, the Court observes that the judgment of the Court of Appeal was delivered on 20 February 2012 and the Applicant filed this Application on 25 July 2016. The Court notes, in the circumstances, that four (4) years, five (5) months and five (5) days elapsed between the date of the Court of Appeal's decision and the filing of the present Application. The Court will therefore determine whether the period that the Applicant took to file the Application is reasonable within the meaning of Article 56(6) of the Charter.

39. As the Court has established, the reasonableness of the period for seizure of the Court depends on the particular circumstances of each application and must be determined on a case-by-case basis.[11] Some of the circumstances that the Court has taken into consideration include: imprisonment, indigence and illiteracy.[12] The Court has also taken into consideration the time taken in the application for review of the Court of Appeal's decision.[13]

40. In the present case, the Applicant is incarcerated, restricted in his movements and with limited access to information. Furthermore, on 30 April 2013, he filed an application for review of the Court of Appeal's judgment, which had been pending at the time of filing the Application. Taking into account these circumstances, the Court finds the period of four (4) years, five (5) months and five (5) days to be reasonable.

41. Finally, with respect to the requirement set out under Rule 50(2)(g) of the Rules, the Court notes that 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,

[11] *Anudo Ochieng Anudo v. United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248, § 57.
[12] *Igola Iguna v. United Republic of Tanzania,* ACtHPR, Application No. 020/2017, Judgment of 1 December 2022, § 35; *Thomas v. Tanzania* (merits), *supra*, § 73; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.
[13] See *Werema Wangoko Werema and Waisiri Wangoko Werema v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 520, § 49.

the provisions of the Charter or of any legal instrument of the African Union. The Application is therefore in fulfilment of Rule 50(2)(g) of the Rules.

42. As a consequence of the foregoing, the Court finds that this Application is admissible.

VIII. MERITS

43. The Applicant alleges that his conviction was based on the doctrine of recent possession of the alleged stolen goods but contends that the owner of the goods was never identified during the proceedings of the national courts.

44. Furthermore, according to the Applicant, the boat engine which was allegedly stolen was never produced in Court as an exhibit to be identified by the owner Joel Faustin. He therefore argues that the prosecution failed to prove its case beyond a reasonable doubt and therefore his conviction was a violation of his right to a fair trial.

***

45. Article 7(1) of the Charter provides that "[e]very individual shall have the right to have his cause heard ..."

46. This Court has in the past noted "... that the imposition of a sentence in a criminal offence, and in particular a heavy prison sentence, should be based on strong and credible evidence. That is the purport of the right to the presumption of innocence also enshrined in Article 7 of the Charter."[14]

[14] *Abubakari v. Tanzania* (merits), *supra*, § 174; *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 72; *Majid Goa alias Vedastus v. United Republic of Tanzania* (merits and reparations) (26 September 2019) 3 AfCLR 498, § 72.

47. In the instant case, the Applicant alleges that the procedure in the District Court in relation to the consideration of evidence was not proper. As a result, according to him, his conviction was tainted with injustice.

48. The Court reiterates its position in *Kijiji Isiaga v. United Republic of Tanzania* that:

> … domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence, and as an international court, this court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.[15]

49. Moreover, the Court restates its case-law that:

> As regards, in particular, the evidence relied on in convicting the Applicant, the Court holds that, it was indeed not incumbent on it to decide on their value for the purposes of reviewing the said conviction. It is however of the opinion that, nothing prevents it from examining such evidence as part of the evidence laid before it so as to ascertain in general, whether consideration of the said evidence by the national Judge was in conformity with the requirements of fair trial within the meaning of Article 7 of the Charter in particular.[16]

50. The above notwithstanding, the Court can evaluate whether the manner in which domestic proceedings were conducted, including the assessment of evidence, was done in consonance with international human rights standards.

51. From the record, the District Court exhaustively considered the evidence presented in the Applicant's case, including the credibility of the witnesses and the evidence tendered in relation to the stolen goods; and this was upheld by the High Court and the Court of Appeal.[17] The Court further notes

[15] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.
[16] *Abubakari v. Tanzania* (merits), *supra*, §§ 26 and 173. See also *Isiaga v. Tanzania* (merits) *supra*, § 66.
[17] *Shabani Menge and Thobias Charles v. Republic*, Judgment of the District Court, pages 2-12.

that the Applicant has failed to demonstrate that the manner in which the Court of Appeal evaluated the evidence revealed manifest errors requiring this Court's intervention**.**

52. In light of the foregoing, the Court dismisses this allegation and finds that the Respondent State has not violated Article 7(1) of the Charter.

IX. REPARATIONS

53. The Applicant prays the Court to:

i. Set aside the decision of the Court of Appeal and order his release;
ii. Order payment of reparations for the time spent in prison; and
iii. Order any other relief that the Court deems fit.

***

54. Article 27(1) of the Protocol provides been violation of a human or peoples' rights it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

55. As it has consistently held, the Court observes that, for reparations to be granted, the Respondent State should first be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Third, where it is granted, reparation should cover the prejudice suffered. Lastly, the Applicant bears the onus to justify the claims made.[18]

[18] See *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 157. See also, *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.

56. In the instant case, no violation has been established, thus, an order for reparations is not warranted. The Court, therefore, dismisses the Applicant's prayers for reparations.

X. COSTS

57. The Applicant did not make any submissions on costs.

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58. The Court notes that Rule 32(2) of its Rules provides that "unless otherwise decided by the Court, each party shall bear its own costs."

59. In the instant case, the Court does not find any justification to depart from the above provision and therefore rules that each Party shall bear its own costs.

XI. OPERATIVE PART

60. For these reasons,

THE COURT,

Unanimously and in default:

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Declares* that the Application is admissible.