

## JUDGMENT SUMMARY

### DEOGRATIUS NICHOLAUS JESHI V. UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 017/2016

#### JUDGMENT ON MERITS AND REPARATIONS

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

**Arusha, 13 February 2024:** The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Deogratius Nicholas Jeshi v. United Republic of Tanzania*.

Deogratius Nicholas Jeshi (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 alleges 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, claimed that the Court did not have jurisdiction to revise the judgment of the Respondent State's Court of Appeal by re-assessing the evidence, quashing the conviction, setting aside the sentence and setting the Applicant at liberty. The Respondent State also claimed that all the allegations raised before the Court had been already raised as grounds for appeal before its Court of Appeal.

With regard to the contention that the Court would be exercising appellate jurisdiction, 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.

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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 and for not filling the Application within a reasonable time.

Regarding the Respondent State's objection that the Applicant failed to exhaust local remedies, 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, as this, within the Respondent State's legal system, is an extraordinary remedy.

Concerning the Respondent State's objection to the admissibility of the Application for not filing the Application within a reasonable time, the Court found that the filing of the Application by the Applicant after three (3) years and fifteen (15) days was reasonable within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules, considering, among others, that the Applicant is a lay person, that he is self-represented in the proceedings before this Court and that he has been incarcerated since 18 August 2003.

For these reasons, the Court dismissed the Respondent State's objections to the admissibility of the Application, and after having satisfied itself that the Application is in accordance with all the conditions set out in Article 6(2) of the Protocol, 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 further 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 evidence which was not properly examined and evaluated and that his application for review of the Court of Appeal's judgment was unjustly denied. 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 had failed to demonstrate and prove that the manner in which the trial and appellate proceedings were conducted or how the evidence was evaluated, revealed manifest errors requiring the Court's intervention. The Court also found there is nothing on the record to support the

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Applicant's claim that the conduct of the Respondent State's Court of Appeal led to a violation of his right to be heard with regard to the allegation that his application for review was unjustly denied by the Respondent State's Court of Appeal.

The Court further noted that the Applicant had not made any specific submissions nor provided evidence that the Respondent State violated Article 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.

The Court held, however, that the Respondent State had violated Article 4 of the Charter, considering that the Applicant was mandatorily sentenced to death under a law that does not allow any discretion to the judicial officer. The Court reiterated its finding in its previous decisions that the mandatory imposition of the death penalty constitutes a violation of the right to life. The Court also held that the Respondent State violated the Applicant's right to dignity protected under Article 5 of the Charter in relation to the method of execution of the death penalty, that is, by hanging.

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 take all necessary measures to remove the mandatory death penalty from its laws, within six (6) months of the notification of the Judgment, as well as, to take 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, within one (1) year of the notification of this Judgment.

The Court also ordered the Respondent State 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. The Court further ordered the Respondent State to publish this judgment on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, within a period of three (3) months from the date of notification, 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 execution 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



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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/0172016>.

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org)

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