



Arusha, Tanzania
Website: www.african-court.org
Telephone+255-732-979-509

JUDGMENT SUMMARY

JOHN MWITA

APPLICATION NO. 044/2016

V.

UNITED REPUBLIC OF TANZANIA

JUDGMENT ON MERITS AND REPARATIONS

13 February 2024

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), today, delivered a Judgment in the matter of *John Mwita v. United Republic of Tanzania*.

Mr. John Mwita (hereinafter referred to as "the Applicant") is a national of Tanzania and brings his Application against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"). At the time of filing the Application, he was imprisoned at Butimba Central Prison, Mwanza, having been convicted of armed robbery and sentenced to thirty (30) years in prison. The Applicant alleges a violation of his right to a fair trial in relation to proceedings before the national courts. He specifically contends that the Respondent State infringed upon his right to equal treatment and protection of the law, right to bail, right to legal representation and right to be heard, contrary to Articles 2, 3, 6 and 7 of the African Charter on Human and Peoples' Rights (the Charter), respectively.

The Respondent State raised objections to the jurisdiction of the Court and to the admissibility of the Application.

With respect to jurisdiction, the Respondent State asserted that the Applicant was asking the Court to sit as an appellate court to review matters which had been decided by its supreme

judicial body, the Court of Appeal. Additionally, the Respondent State asserts that the Applicant is also asking the Court to sit as a Court of first instance and adjudicate on matters, which were never raised before the municipal courts.

In addressing these objections, the Court recalled that by virtue of Article 3(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), it has jurisdiction to examine any application submitted to it provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.

As regards the Respondent State's contention that the Court would be exercising appellate jurisdiction by examining the evidentiary issues which were determined with finality by its highest court, the Court observed that it does not exercise appellate jurisdiction over the decisions of domestic courts. Notwithstanding this, the Court affirmed its established jurisprudence that it had the power to examine the compatibility of domestic proceedings with standards set out in international human rights instruments ratified by the State concerned, but that this does not make it an appellate court. Accordingly, the Court dismissed the Respondent State's objection to its material jurisdiction.

Regarding the second objection that the Applicant was raising, for the first time, matters which were not raised at domestic level, the Court stated that this issue pertains to admissibility and decided to consider it as part of the consideration of admissibility.

As regards other aspects of its jurisdiction, although not disputed between the parties, the Court established that it had temporal, personal and territorial jurisdiction to hear the Application. The Court then concluded that it had jurisdiction to hear the Application.

On the issue of admissibility, the Court considered the objections raised by the Respondent State, relating to non-exhaustion of local remedies and failure to file the Application within a reasonable time.

Regarding the first objection, the Court noted that pursuant to Rule 50(2)(e) of the Rules of Court (the Rules), any application filed before it must fulfil the requirement of exhaustion of local remedies, unless local remedies are unavailable, ineffective, or the domestic procedure to pursue them is unduly prolonged. Recalling its established caselaw, the Court emphasised that this requirement seeks to ensure that, as the primary stakeholders, States have the opportunity to address human rights violations happening within their jurisdiction before an international body is called upon to intervene.

The Court noted from the record the Applicant made four allegations of violations of human rights; namely, the right to equal treatment and equal protection of the law, the right to bail, the right to be heard, and right to legal representation, contrary to Articles 2, 3, 6 and 7 of the Charter, respectively. The Court further noted that the Applicant's allegation of denial of his right to bail is indeed being raised for the first time. However, Section 148(5) of the Respondent State's Criminal Procedure Act makes the crime of which the Applicant was convicted, namely, armed robbery, a non-bailable offence in the Respondent State. Accordingly, the Court observed that there would have been no prospect for success for the Applicant even if he had raised the denial of his right to bail before the domestic courts. In other words, there was no available and effective remedy in the Respondent State with regard to this allegation and in this context, he cannot be required to have exhausted a non-existent local remedy.

Consequently, the Court found that the Applicant had exhausted local remedies as envisaged under Article 56(5) of the Charter and Rule 50(2) (e) of the Rules.

With respect to the Respondent State's contention that the Applicant failed to file his Application within a reasonable time, the Court recalled its jurisprudence that the reasonableness of the time limit for seizure depends on the circumstances of each case and should be determined on a case-by-case basis. The Court further recalled its position that this notwithstanding, the Court has held that the prerequisite to justify reasonableness does not apply in instances where the delay in filing is relatively short and thus, manifestly reasonable.

In the instant case, the Court noted from the records that the Court of Appeal determined the Applicant's appeal on 12 March 2013 and the Applicant filed his Application on 25 July 2016, that is, after a lapse of three (3) years, four (4) months, and thirteen (13) days.

The Court considered that the Applicant was lay in matters of law, incarcerated and isolated from the general population and cut off from possible information flow, and restricted in his movements. Given these circumstances, the Court found that the filing of the Application within a period of three (3) years, four (4) months, and thirteen (13) days was reasonable in accordance with Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

The Court then satisfied itself that other conditions of admissibility set out in Rule 50 (2) of the Rules were met. It held that the identity of the Applicant was disclosed, the Application was compatible with the Constitutive Act of the AU and the Charter; and that it did not contain disparaging nor insulting language. The Court further found that the Application was not based exclusively on news disseminated through the mass media and that it did not concern a matter

which was already settled within the terms of Article 56 (7) of the Charter. Accordingly, the Court declared the Application admissible.

On the merits, the Court first considered whether the Respondent State violated the rights of the Applicant enshrined in Article 7 of the Charter by examining three allegations of the Applicant, that is: (i) his conviction was based on insufficient evidence obtained from the testimony of Prosecution Witnesses (PW 1 and PW 6) and Prosecution Exhibit (Exhibit 2); (ii) he endured an excessively prolonged trial period; and (iii) he was denied adequate legal representation. Subsequently, the Court examined the Applicant's alleged violations of the right to equality and equal protection of the law under Article 2 and 3 of the Charter; and the right to bail under Article 7 of the Charter.

On the first allegation that the Applicant's conviction and sentence were based on unreliable evidence and involuntary confession, the Court acknowledged that the right to a fair trial requires a conviction on a criminal charge to be based on strong and credible evidence. It further underscored that the nature or form of admissible evidence for purposes of criminal conviction may vary across the different legal traditions but it must always have sufficient weight to establish the guilt of the accused. However, the Court reiterated its position that it is not an appellate court and as a matter of principle, it is up to national courts to decide on the probative value of a particular piece of evidence. It reaffirmed that the Court could not assume the role of the domestic courts and investigate the details and particulars of evidence used in domestic proceedings.

In the instant case, the Court noted from the records that the Prosecution summoned five (5) witnesses. However, the District Court chose to base its decision solely on the accounts provided by three (3) Prosecution Witnesses (PW 1, PW 2, and PW 5), opting to disregard the testimonies of PW 3 and PW 4 due to concerns about their reliability.

The Court further noted that the trial Court invoked the doctrine of recent possession, which was prompted by the fact that the Applicant was said to have been found in possession of the stolen items just two hours after the incident occurred. Significantly, before the trial court, the Applicant failed to provide any explanation regarding the circumstances under which he came into possession of these items. This was also the basis for both the High Court and the Court of Appeal's decisions to uphold the Applicant's conviction.

The Court observed that, taken as a whole, the manner in which the domestic courts evaluated the evidence leading to the Applicant's conviction did not reveal any manifest errors or miscarriage of justice to the Applicant. Acknowledging the margin of appreciation that domestic courts have in assessing evidence, in the circumstances of this case, the Court found it appropriate to accord deference to their determinations. As a result, the Court held that the

Respondent State did not violate the Applicant's right to be heard, guaranteed under Article 7(1) of the Charter.

As regards the Applicant's contention relating to lack of legal assistance, the Court noted from the record, that the Applicant was not represented by Counsel during the domestic proceedings despite the fact that he faced a serious charge of armed robbery carrying a minimum thirty (30) years prison sentence.

The Court affirmed its jurisprudence that where accused persons are charged with serious offences which carry heavy sentences and they are indigent, free legal assistance should be provided as of right, whether or not they have requested for it.

The Court also reaffirmed that, the duty to provide free legal assistance to indigent persons facing serious charges carrying a heavy penalty is for both the trial and appellate stages. States should, therefore, automatically provide legal assistance as long as the interests of justice require, regardless of the fact that an applicant has not requested for it.

With respect to the instant Applicant, the Court observed that he was charged with an offence carrying a minimum of thirty (30) years imprisonment, which should have prompted the judicial authorities to assign a lawyer to him. Considering the fundamental importance of the Applicant's rights at stake, the Court held that this obligation does not depend on the Respondent State's resource capacity or even on an express request from the Applicant. Consequently, the Court held that the Respondent State has violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

As regards the Applicant's allegation of violation of the right to equality and equal protection of the law, the Court observed that the right to protection against discrimination, as stipulated in Article 2 of the Charter, is fundamentally related to the right to equality before the law and equal protection of the law enshrined under Article 3 of the Charter. However, the ambit of the right to non-discrimination extends beyond the confines of equal treatment under or before the law. It also has an additional facet that enables individuals to effectively enjoy the rights outlined in the Charter, without facing differentiation based on attributes like race, colour, gender, religion, political ideology, national origin, social heritage, or any other status.

In the instant case, the Court recalled that the domestic courts thoroughly reviewed all available evidence and considered the arguments presented in the Applicant's appeal, ultimately concluding that they held no substance. The courts specifically highlighted that his

unexplained possession of the stolen items stood as irrefutable evidence and proved his culpability beyond any reasonable doubt. It was upon this foundation that he was found guilty and subsequently sentenced to a thirty (30) year imprisonment. In this regard, the Court found nothing on record showing that the Applicant was treated unfairly or subjected to discriminatory treatment in the course of the domestic proceedings. The Court, therefore, dismissed the Applicant's allegation that the Respondent State violated Article 2 and Article 3(1) and (2) of the Charter

The Court then considered the Applicant's contention that the Respondent State violated his fundamental right to liberty by detaining him from the time of his arrest, that is, 12 March 2007, until his conviction on 9 May 2008, without granting him bail. The Court noted that the Charter does not explicitly provide for the right to bail in any of its provisions. However, the right is enshrined under Article 9 (3) of the ICCPR, which affirms that the detention of individuals accused of having committed crimes should be an exceptional measure.

The Court emphasised that the decision on whether to grant bail to an accused demands an individualised assessment, taking into account the unique facts of each case and the specific circumstances of the Applicant. In such assessment, while considering the nature of the charges against an accused is relevant, the Court observed that it should not be the sole determining factor for the denial or granting of bail. In essence, the enjoyment or denial of the right to bail by an accused should not be a legally predetermined outcome solely based on the nature of the crime.

The Court further acknowledged that the right to bail is intertwined with other rights, including the right to liberty, the right to equality and non-discrimination, right to be heard, the presumption of innocence and the right to have adequate time and facility to prepare one's defence. Violating the right to bail is, therefore, not an isolated transgression; rather, it constitutes a simultaneous infringement upon several other fundamental rights.

In the instant case, the Court recalled that Section 148(5) of the Respondent State's Criminal Procedure Act explicitly designates armed robbery, the offence for which the Applicant was convicted, as a non-bailable offence. As a result, even if the Applicant had raised the issue during domestic proceedings, the Respondent State's courts would have been precluded by law from considering bail for armed robbery. In view of this, the Court therefore found that the Respondent State's denial of the possibility of bail to the Applicant violated his right to liberty protected under Article 6 of the Charter as read jointly with Article 9(3) of the ICCPR.

On the Applicant's request for reparations, the Court noted that the onus is on an applicant to provide evidence to justify prayers for material damages. With regard to material damages, the Court found that the Applicant did not indicate the nature of the material prejudice he suffered and how this was linked to the established violation of his rights and therefore the Court did not grant reparations for material prejudice.

With regards to moral damages, the Court recalled its finding that the Respondent State violated the Applicant's right to free legal assistance by failing to avail him the service of counsel in the course of his trials in the domestic courts and his right to liberty by denying him the possibility of obtaining bail awaiting trial. On this basis, exercising its discretion in equity, the Court awarded the Applicant moral damages in the sum of Tanzanian Shillings three hundred thousand (TZS 300, 000) as adequate reparation of the moral prejudice he sustained as a result of the established violations.

Regarding the prayer to quash the Applicant's conviction and sentence and restoring his liberty, the Court reiterated that it is not an appellate court and as such, in principle, does not entertain requests to vacate or overturn the decisions of domestic courts, and that in any event, the violations established in the instant Application did not affect the conviction of the Applicant.

Regarding guarantees of non-repetition, the Court ordered the Respondent State to amend Section 148(5) of its Criminal Procedure within three (3) years from the date of notification of the judgment in such a manner that judicial officers are provided with the discretion to grant or deny bail to an accused person having taken into consideration the specific circumstances of each case.

On publication, the Court considered that for reasons now firmly established in its practice, and in the peculiar circumstances of this case, publication of this judgment was necessary and ordered publication of the judgment. On implementation and reporting, the Court ordered the Respondent State to submit to it, within six (6) months from the date of notification of the judgment, a report on the status of implementation of the orders set forth, every six (6) months until the Court considered that there has been full implementation thereof.

On costs, 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/0442016>

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.