

JUDGMENT SUMMARY

NZIGIYIMANA ZABRON

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 051/2016

JUDGMENT ON THE MERITS AND REPARATIONS

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

ARUSHA, 4 June 2024, the African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the matter of *Nzigiyimana Zabron v. United Republic of Tanzania*.

Nzigiyimana Zabron (the Applicant) is a national of the Republic of Burundi who was residing in the United Republic of Tanzania (the Respondent State) at all material times in the present case. At the time of filing the Application, he was awaiting execution of the death sentence at Butimba Central Prison in Mwanza, having been convicted of the offence of murder, however he had his sentence subsequently commuted to life imprisonment. In the Application before the Court, he challenges the violation of his rights in connection with proceedings before domestic courts.

In his Application, the Applicant alleges that the Respondent State violated his rights under Articles 7(1)(b), 7(1)(c), 4, and 5 of the African Charter on Human and Peoples' Rights (the African Charter), along with Article 36 of the Vienna Convention on Consular Relations (VCCR), as a result of the criminal proceedings before the domestic courts.

The Respondent State raised an objection to the Court's material jurisdiction on the grounds that the present Application requests the Court to sit as an appellate court to consider issues of fact and law previously decided by the High Court of Tanzania.

The Court recalled that, as it had already established, where allegations of human rights violations relate to the manner in which domestic courts assessed the evidence and to the sentence imposed by them, it reserves the power to determine whether the related domestic proceedings were conducted in a manner that is consistent with international human rights instruments to which the Respondent State is a party,

JUDGMENT SUMMARY

including the relevant provisions of the African Charter. The Court therefore dismissed the Respondent State's objection to its material jurisdiction.

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.

Regarding the admissibility of the Application, the Court considered the Respondent State's objection relating to the requirement to exhaust local remedies and to file the Application within reasonable time after the exhaustion of local remedies.

In relation to the objection that local remedies were not exhausted, the Court dismissed the objection noting that the Applicant had appealed to the highest court in Tanzania and was not required to exhaust further extraordinary remedies.

The Court found that the length of time of two (2) years, eleven (11) months and seven (7) days that it took for the Applicant to file his Application was reasonable within the meaning of Article 56(6) of the African Charter, given that the Applicant was incarcerated and on death row, lay in law, self-representing and required time to reflect on the advisability of seizing the Court as he had filed an application for review before the Court of Appeal.

Having regard to the other admissibility requirements not contested by the Parties, the Court found that the Application complies with them and therefore declared it admissible.

On the merits, the Applicant alleges that the Respondent State violated i) his right to a fair trial; iii) his right to life, iii) his right to respect for his dignity and iv) his right to consular assistance.

With regard to the allegation that the Respondent State violated the Applicant's right to a fair trial, the Court noted that the Applicant complained of an unduly long pre-trial detention of seven (7) years, ten (10) months and twenty-nine (29) days, given that his case was not complex and relied on witness testimony that was allegedly prejudiced given the lapse of time between arrest and trial. Upon examination of the length of pretrial detention, the Court found that the lapse of time of seven (7) years, ten (10) months and twenty-nine (29) days constituted an unduly prolonged period that violated Article 7(1)(d) of the African Charter and the Applicants right to be tried within a reasonable time.

JUDGMENT SUMMARY

Regarding the alleged violation of the right to defence, the Court dismissed the claim that the Respondent State violated Article 7(1)(c) of the African Charter as there was no evidence on record that the Applicant's legal representative was prevented from preparing the Applicant's defence and that the Applicant had not raised the issue of ineffective representation in the course of the domestic proceedings.

The Court further considered the alleged violation of the right to interpretation services during arrest and trial, recalling that the right to interpretation during one's own trial is guaranteed under Article 7(1)(c) of the African Charter, read jointly with Article 14(3)(a) of the International Covenant on Civil and Political Rights (ICCPR), and that the need for interpretation must be communicated to the trial court. The Court dismissed the Applicants allegation of violation under Article 7(1)(c) of the African Charter given that he had fully participated in trial proceedings in Kiswahili, meaning it was reasonable to conclude he understood the language and required no interpretation.

The Court then considered the alleged violation of the right to be presumed innocent in respect of which the Applicant claimed that the Respondent State convicted him without establishing his guilt beyond a reasonable doubt. The Court dismissed the alleged violation of Article 7(1)(b) of the African Charter upon scrutiny of the record which revealed that evidence at trial was fairly evaluated and was strong, and credible to warrant a conviction without any miscarriage of justice.

With regard to the alleged violation of the right to life, the Court held that the Applicant's right to life under Article 4 of the African Charter had been violated through imposition of the mandatory death sentence under Section 197 of the Respondent States Penal Code which constitutes an arbitrary deprivation of the right to life. In arriving at this finding, the Court relied on its now established case-law that the right to life is breached under Article 4 of the African Charter in instances where the judicial officer is deprived of the discretion to met any other penalty than the death sentence once the offence of murder is established. The Court reiterated its finding that, in such circumstances, fairness is not upheld while imposing the death sentence, thus making the latter contrary to the right to life in the meaning of Article 4 of the African Charter.

In relation to the third alleged violation of the right to dignity under Article 5 of the African Charter, the Court noted that the Applicant was sentenced to death by hanging and reiterated its previous jurisprudence that held that hanging as a method of implementing the death penalty constitutes a violation of Article 5 of the African Charter as it constitutes a form of torture and cruel, inhuman and degrading treatment.

The Court further assessed the Applicants claim that being held on death row for 8 years in constant fear of execution on short notice constituted further cruel, inhuman and degrading treatment in violation of

JUDGMENT SUMMARY

Article 5 of the Charter. After considering its settled jurisprudence, the Court restated that holding the Applicant prisoner on death row for more than 3 years on death row constituted cruel, inhuman or degrading treatment and violated article 5 of the African Charter.

The Court also examined the allegation that deplorable prison conditions including isolation, deprivation of food, overcrowding of cells and failure to be provided access to healthcare services constituted cruel, inhuman and degrading treatment in violation of Article 5 of the African Charter. In this regard, relying on the balance of probabilities, the Court found that the Applicant suffered deplorable conditions of detention leading to a breach of the right to dignity under Article 5 of the African Charter. The Court based its findings on the failure of the Respondent State to refute the Applicant's allegation, the Respondent State's failure to respond to said case with anything other than a bare denial and the Respondent States 2016 and 2021 Universal Periodic Review reports that disclosed serious concerns about deplorable prison conditions.

Regarding the alleged violation of the right to consular assistance under Article 36(1) of the VCCR, the Court found that the Respondent State had failed to inform the Applicant of his rights thus leading to a violation of Article 36(1) of the VCCR read jointly with Article 7(1)(c) of the African Charter.

Regarding reparations, the Applicant prayed the Court to grant him reparations for the violations he suffered, to vacate his conviction and sentence, and to order his release.

Regarding reparations, the Court declined to grant reparations for material prejudice for lack of proof of prejudice but noted that the violations found caused the Applicant moral prejudice and therefore, in the exercise of its judicial discretion, awarded the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian shillings as fair compensation.

The Court declined to quash the Applicant's conviction and order his release on the basis that the establishment of guilt beyond a reasonable doubt for murder had been unimpeachable. The Court however ordered the Respondent State to revoke the death sentence meted against the Applicant, and remove him from the death row.

The Court further ordered that the Respondent State remove the mandatory death penalty from its statute book within six (6) months of the notification of the judgment; and take all necessary measures, within one (1) year of the notification of the judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and uphold the discretion of the judicial officer.

JUDGMENT SUMMARY

The Court further held that the violation against the right to life established by the Applicant extended beyond his case and required an order that the Respondent State publish the judgement within three (3) months of notification of the judgement on the website of the Judiciary, the Minister for Constitutional and Legal Affairs for one (1) year after the date of publication.

The Court decided that each party should bear its own costs.

In accordance with Article 28(7) of the Protocol and Rule 70(3) of the Rules, Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA issued Declarations which are appended to the Judgment.

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/0512016>

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.