

**TEMBO HUSSEIN**  
**V.**  
**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 001/2018**

**JUDGMENT ON MERITS AND REPARATIONS**

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

**Arusha, 26 June 2025:** The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Tembo Hussein v. United Republic of Tanzania*.

Tembo Hussein (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application he was on death-row at Uyui Central Prison, Tabora, having been tried, convicted and sentenced to death by hanging for the offence of murder. The Applicant alleges the violation of his rights during 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 a criminal appeal court and claimed that the Court does not have jurisdiction to quash the decision of its High Court.

With regard to the contention that the Court would be exercising criminal 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

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**JUDGMENT SUMMARY**

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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.

As to the Respondent State's objection that the Court lacked jurisdiction to quash the conviction and sentence imposed on the Applicant and to order his release from prison, the Court recalled Article 27(1) of the Protocol, and concluded that it has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation necessitated such an order. For these reasons, the Court dismissed the objection raised by the Respondent State.

The Court further noted that given that the alleged violations presented before it pertained to rights enshrined in the Charter, to which the Respondent State is a Party, it possessed the necessary material jurisdiction to examine the Application.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. In this regard, the Court found that it had personal jurisdiction since, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol, which allows individuals to file applications against the Respondent State as per Article 5(3) of the Protocol. The Court underscored that the Respondent State's withdrawal of the said Declaration, on 21 November 2019, did not affect this Application as the withdrawal took effect on 22 November 2020, which was after this Application had been filed, on 19 February 2018.

The Court also held that it had temporal jurisdiction as the alleged violations occurred after the Respondent State had become a party to the Protocol. Lastly, it found that it had territorial jurisdiction given that the facts of the matter occurred within the territory of the Respondent State.

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**JUDGMENT SUMMARY**

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The Court observed that pursuant to Article 6(2) of the Protocol, it must rule on the admissibility of all cases brought before it. In respect of this Application, the Respondent State raised an objection to the admissibility of the Application based on the non-exhaustion of local remedies.

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. For this reason, the Court dismissed the Respondent State's objections to the admissibility of the Application.

The Court observed that no objection had been raised with respect to the other admissibility requirements, nonetheless, in line with Rule 50(1) of the Rules, the Court assessed all admissibility criteria provided for in Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, to ensure that the Application fulfilled the necessary standards.

Accordingly, the Court 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 allegations 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 complied 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. The Application was also not based exclusively on news disseminated through mass media, as it was based on court documents from the domestic courts of the Respondent State, in fulfilment of Rule 50(2)(d) of the Rules.

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**JUDGMENT SUMMARY**

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With regard to the requirement that the Application be submitted within a reasonable time, the Court noted that the final decision of the Court of Appeal of Tanzania was delivered on 15 March 2014 and the Applicant filed his Application before this Court on 19 February 2018. The Court also noted that the Applicant filed an application for review of the Court of Appeal's decision which was dismissed on 7 August 2017. The Court found, therefore, that the reasonableness of time for filing, in this case, must be computed from the date on which the Court of Appeal dismissed the Applicant's application for review, that is 7 August 2017. It thus held that the period of six months and 12 days that it took the Applicant to file this Application was reasonable within the meaning of Rule 50(2)(f).

Lastly, the Court found that the case had not been previously settled before another international tribunal and was thus in compliance with Rule 50(2)(g) of the Rules. Therefore, the Court concluded that the Application was admissible.

The Court then considered whether the Respondent State violated Articles 3, 4, 5, and 7(1)(d) of the Charter. The Court observed that the main contention in the Application centred on Article 7(1)(d) of the Charter, hence, this alleged violation was addressed first.

The Applicant alleged that the Respondent State violated his right to a fair trial as he considered that the trial against him breached one of the principles of natural justice, namely, the rule against bias. Specifically, the Applicant asserted that he was not accorded a fair trial because the assessors were allegedly biased as they cross-examined the witnesses instead of asking questions that sought clarification.

The Court recalled its earlier decisions, where it noted that in the Respondent State's legal system, the role of assessors is limited to asking questions to obtain some clarifications and they are not statutorily mandated to cross-examine witnesses. The Court noted that nothing in the record placed before it shows that the assessors cross-examined the witnesses. The Court also noted that the Applicant had not provided any

**JUDGMENT SUMMARY**

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proof that the manner in which the proceedings before the trial court were conducted resulted in any manifest error or serious miscarriage of justice to the detriment of the Applicant. In view of this, the Court, therefore, dismissed this allegation and found that the Respondent State had not violated the Applicant's right to be tried by an impartial court or tribunal protected under Article 7(1)(d) of the Charter with regard to the allegation of bias of the assessors and the allegation that they cross-examined the witnesses.

The Court further found that the Applicant had failed to prove that the Respondent State violated Article 3 of the Charter. The Court also noted that the Applicant was able to make use of all the legal remedies available to him and that he was able to defend himself in accordance with the protections provided by law. Accordingly, the Court found that there was no basis to find a violation, and held that the Respondent State did not violate Article 3 of the Charter.

The Court noted from the record that the Applicant was mandatorily sentenced to death by hanging under a law that does not allow the judicial officer any discretion, which is an issue that had been previously adjudicated by this Court. While the Applicant did not make any submissions directly on this issue in relation to the right to life and dignity, the Court found it necessary to examine whether in the instant case the circumstances warranted a finding in respect of the issue of the mandatory imposition of the death penalty by hanging, in relation to the violation of the right to life, protected under Article 4 of the Charter, and, the violation of the right to dignity, guaranteed in Article 5 of the Charter.

In the present case, the Court held 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 to take into account the nature of the offence and the circumstances of the offender. 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

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**JUDGMENT SUMMARY**

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violated the Applicant's right to dignity and the right not to be subjected to cruel, inhuman or degrading punishment and treatment guaranteed under Article 5 of the Charter in relation to the method of implementation 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 revoke the death sentence imposed on the Applicant and remove him from death row pending the rehearing of his sentence. The Court also ordered the Respondent State to take all necessary measures to remove the mandatory death penalty from its laws, within six 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 year of the notification of this Judgment.

The Court further ordered the Respondent State to remove "hanging" from its laws as the method of execution of the death sentence, within six months of the notification of this Judgment. The Court also 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 months from the date of notification, and ensure that the text of the judgment is accessible for at least one 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.

As to costs, the Court decided that each party should bear its own costs.



# AfCHPR

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## **JUDGMENT SUMMARY**

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Judge Rafaâ BEN ACHOUR, Judge Blaise TCHIKAYA and Judge 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 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/0012018>

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

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