

**BAHATI MTEGA AND FLOWIN MTWEVE**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION No. 009/2019**

**JUDGMENT ON MERITS AND REPARATIONS**

**26 JUNE 2025**

**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 *Bahati Mtega and Flowin Mtwewe v. United Republic of Tanzania*.

Bahati Mtega and Flowin Mtwewe (hereinafter referred to as “the First and Second Applicants” respectively and as “the Applicants” collectively) are nationals of the United Republic of Tanzania (“the Respondent State”). At the time of filing this Application, they were imprisoned at Ruanda Prison in Mbeya, serving a sentence of life imprisonment and 12 strokes of the cane following their trial, conviction, and sentence for gang rape. The Applicants alleged the violation of their rights in the course of the domestic proceedings against them.

The Respondent State objected to the jurisdiction of the Court as well as to the admissibility of the Application.

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Regarding the Court's jurisdiction, the Respondent State did not provide any particulars as to the alleged lack of jurisdiction. Given the prescriptions of Rule 49(1) of the Rules of Court ("the Rules") however, the Court proceeded to assess all aspects of its jurisdiction. In this regard, the Court observed that, since the alleged violations concerned rights guaranteed under the Charter to which the Respondent State is a Party, it had the requisite material jurisdiction to consider the Application.

The Court also found that it had personal jurisdiction given that, the Respondent State was a Party to 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") and had deposited the required Declaration under Article 34(6), allowing the Applicant to file the Application. Although the Respondent State withdrew its Declaration on 21 November 2019, the Court emphasized that the withdrawal had no retroactive effect and did not impact Applications filed before the withdrawal, such as the present one.

The Court further found that it had temporal jurisdiction, as the alleged violations occurred after the Respondent State became a Party to the Protocol, on 10 February 2006. Lastly, the Court concluded that it had territorial jurisdiction, as the alleged violations in question took place within the Respondent State's territory.

The Court noted that, in accordance with Article 6(2) of the Protocol, it is required to assess the admissibility of all cases before it. In this case, the Respondent State objected to the Application's admissibility on the grounds that local remedies had not been exhausted.

Regarding the Respondent State's objection alleging that the Applicants failed to exhaust

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local remedies, the Court found that this requirement had been fulfilled. The Applicants had pursued all available judicial remedies, appealing first to the High Court and ultimately to the highest court within the Respondent State's legal system, that is, the Court of Appeal. The Court also noted that the current Application was submitted only after the Court of Appeal had delivered its judgment. The Court further observed that seeking a review of the Court of Appeal's decision constituted an extraordinary remedy which the Applicants were not obligated to exhaust. Consequently, the Court dismissed the Respondent State's objection.

The Court noted that no objections had been raised regarding the admissibility requirements under Rule 50(2)(a), (b), (c), (d), (f), and (g). Nevertheless, it proceeded to assess these requirements to ensure that the Application met all the requisite admissibility standards.

Accordingly, the Court held that the Applicants had been clearly identified by their names, in fulfilment of Rule 50(2)(a) of the Rules. It also held that the allegations by the Applicants sought to protect their 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 the 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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With regard to the requirement that the Application be submitted within a reasonable time, the Court recalled that neither the Charter nor the Rules specified a precise time-frame within which an Application must be filed following the exhaustion of local remedies. Instead, the reasonableness of such a time-frame was assessed on a case-by-case basis. In the present matter, the Court observed that the Court of Appeal delivered its judgment on 3 August 2016, and the Application was filed on 22 March 2019, amounting to a period of two years, seven months, and nineteen days. Having assessed the time-frame in light of its established jurisprudence, and considering the Applicants' status as laypersons who were incarcerated and who had no legal representation during domestic proceedings, the Court held that the period of two years, seven months, and nineteen days was a reasonable period as required under Rule 50(2)(f) of the Rules.

Lastly, the Court found that the matter had not been previously settled by another international mechanism, thereby satisfying the requirement under Rule 50(2)(g) of the Rules. Accordingly, the Court declared the Application admissible.

The Court then considered whether the Respondent State violated Articles 2, 3, 5, and 7 of the Charter.

The Court reiterated that the burden of proof for alleged violation of the right to non-discrimination lay with the alleging party, who must present evidence demonstrating unlawful differentiation among similarly situated individuals. In the instant Application, the Court found that the Applicants failed to provide any such evidence to substantiate their claim of discrimination. Consequently, the Court held that the allegation of a violation of Article 2 had not been established and dismissed the claim accordingly.

As for the alleged violation of their right to equality and equal protection of the law, the

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Court found that the Applicants had made general assertions regarding a violation of their rights. They neither provided specific arguments nor submitted any evidence to support their claims. In view of the absence of substantiation, the Court held that the Applicants had failed to establish a violation of Article 3 of the Charter and accordingly dismissed the allegations.

The Applicants also alleged that the Respondent State violated their right to dignity under Article 5 of the African Charter by sentencing them to corporal punishment. They argued that the sentence of 12 strokes of the cane inflicted physical and emotional harm, which, in their view, constituted a clear violation of the Charter's prohibition against cruel, inhuman, or degrading treatment.

Referring to its prior jurisprudence, the Court reaffirmed that corporal punishment is incompatible with the provisions of Article 5 of the Charter. It noted that this position aligned with findings of the United Nations Special Rapporteur on Torture, the UN Human Rights Council, and the African Commission on Human and Peoples' Rights. In the present case, while the record did not indicate whether the punishment was executed or not, the Court found that the existence of a law permitting corporal punishment and the judicial imposition of corporal punishment by the Respondent State's courts violated Article 5 of the Charter.

The Applicants further alleged that the Respondent State violated Article 7 of the Charter by failing to provide them with legal representation during the domestic proceedings. They contended that this omission denied them their right to a fair trial as guaranteed under the Charter.

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The Court found that the Applicants were not represented by counsel at any stage of the domestic proceedings. They had, however, been charged with the serious offence of gang rape, which carried a mandatory minimum sentence of life imprisonment. The Court held that, in such circumstances, the interests of justice required the provision of free legal assistance, irrespective of whether the Applicants had requested it. Accordingly, the Court held that the Respondent State violated Article 7(1)(c) of the African Charter, read together with Article 14(3)(d) of the ICCPR, by failing to provide the Applicants with legal representation during domestic proceedings.

Having found that the Respondent State violated Articles 5 and 7(1)(c) of the Charter, the Court held that the violations of the Applicants' rights to dignity and to a fair trial justified an award of moral compensation. While the Applicants sought TZS 100,000,000 each, the Court considered the amount excessive and, applying the principle of equity, awarded TZS 300,000 to each Applicant as fair compensation for the moral prejudice suffered. However, the Court made no award under material prejudice because the Applicants neither specified nor proved any actual material harm resulting from the violations.

The Court also set aside the sentence of 12 strokes of the cane. However, the Court found no compelling circumstances to warrant the Applicants' release. Consequently, the prayer for release was dismissed.

The Court further ordered the Respondent State to repeal provisions on corporal punishment in its criminal laws in order to comply with Article 5 of the Charter within one year of notification of the decision of the Court.

The First Applicant's claim for rehabilitation based on his HIV status was dismissed for lack of substantiation and failure to demonstrate a connection between his condition and

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the violations found.

On implementation and reporting, the Court ordered the Respondent State to submit to it, within six months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

As to costs, the Court ordered that each party 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/0092019>

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

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