

EMMANUEL YUSUF alias NORIEGA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 013/2018

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), today delivered a judgment in the case of *Emmanuel Yusuf Noriega v. The United Republic of Tanzania*

Emmanuel Yusuf Noriega (the Applicant), is a national of the United Republic of Tanzania (the Respondent State). He alleged the violation of Articles 3(1), 3(2), 5 and 7 of the African Charter on Human and Peoples' Rights (the Charter).

The Respondent State raised an objection to the material jurisdiction of the Court based on the fact that domestic courts had adjudicated on the issues being raised by the Applicant. The Court reaffirmed that while it is not an appellate body, it has the authority to assess whether domestic proceedings comply with human rights standards. It determined that it had material jurisdiction since the Applicant alleged violations of Articles 3, 5, and 7 of the Charter to which the Respondent State is a party. The Court consequently dismissed the Respondent State's objection to *material jurisdiction*.

Regarding other aspects of jurisdiction, the Court found that it had personal jurisdiction as the Application was filed before the Respondent State's withdrawal of its Declaration under Article 34(6) 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) took effect. It also held that it had temporal jurisdiction since the alleged violations were of a continuing

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nature, and territorial jurisdiction as the violations occurred within the territory of the Respondent State. Accordingly, the Court held that it had jurisdiction to hear the Application.

On admissibility, the Respondent State did not raise any objection but called upon the Court to declare the Application inadmissible. The Court observed that pursuant to Article 6(2) of the Protocol, restated in Rule 50(1) of the Rules of Court (the Rules), it must determine the admissibility of cases brought before it. Consequently, the Court proceeded to assess whether the Application met all the admissibility requirements set out in Article 56 of the Charter and as restated in Rule 50 of the Rules.

The Court found that, based on the record, admissibility requirements set out under Rules 50(2)(a), 50(2)(b), 50(2)(c), and 50(2)(d) of the Rules were met. Regarding the requirement of exhaustion of local remedies provided under Rule 50(2)(e) of the Rules, the Court noted that the requirement to exhaust local remedies had been met since the Court of Appeal, the highest judicial body of the Respondent State, had considered the matter and dismissed the Applicant's appeal in its entirety on 27 October 2009.

In respect of the requirement under Rule 50(2)(f) of the Rules, that Applications must be filed within a reasonable time after exhaustion of local remedies, the Court recalled its jurisprudence that assessment of the requirement is on a case-by-case basis. The Court observed that in this Application the relevant starting point for calculating the time was 29 March 2010, when the Respondent State filed its Declaration, as this allowed individuals to file claims against it. It also observed that the period between 2007 and 2013 constituted the formative years of its operation and that during this period, members of the general public, let alone persons in the situation of the Applicant could not be presumed to have had sufficient awareness of the existence of the Court.

The Court considered the Applicant's circumstances, including his incarceration on death row, which restricted his access to information and legal assistance. Taking these extenuating factors into account, the Court found that the period of five years was reasonable within the meaning of Article 56(6) of the Charter read together with Rule 50(2)(f).

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Finally, the Court held that the Application did not concern a case already settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter, thus fulfilling Rule 50(2)(g).

In light of all these considerations, the Court, therefore, held that the Application met all admissibility requirements and declared it admissible.

On the merits, the Court found that the Applicant failed to prove his alleged violation of the rights to equality and equal protection of the law, in relation to the manner in which domestic courts conducted their proceedings. The Court thus held that the Respondent State did not violate Article 3(1) and (2) of the Charter in this regard.

Additionally, it determined that there was no violation of the Applicant's right to a fair trial concerning the failure of court assessors to examine witnesses, as guaranteed under Article 7(1) of the Charter.

However, the Court found that the Respondent State violated the Applicant's right to dignity and protection from cruel, inhuman, or degrading punishment and treatment under Article 5 of the Charter. This violation arose from the failure of the Justice of the Peace, acting as an agent of the Respondent State, to order a prompt investigation into allegations of police brutality against the Applicant. The Court emphasized the necessity of ensuring that all allegations of mistreatment, particularly those occurring in detention, are thoroughly and expeditiously investigated.

Regarding the alleged violation of the right to defence, the Court recalled its jurisprudence that an accused facing a serious criminal charge must be provided with free legal assistance if they lack the means to secure representation, and where the interest of justice so requires, without the necessity of a request. The Court found that, given the gravity of the Applicant's case and the complexity of legal proceedings, he should have been granted effective legal aid, and failure to do so constituted a violation of Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR. The Court further ruled, by a majority decision of seven judges in favor and three dissenting, that the Respondent State also violated the Applicant's right to a fair trial by failing to try him within a reasonable time, as required under Article 7(1)(d) of the Charter.

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While these claims did not arise from the Applicant, the Court, suo motu, also held that the Respondent State violated the Applicant's right to life, as protected under Article 4 of the Charter, by imposing the death penalty in a mandatory manner without allowing judicial officers discretion to consider the nature of the offense and the personal circumstances of the accused. This ruling was reached by a majority of eight judges, with two dissenting. Additionally, the Court found that the imposition of the death penalty by hanging constituted a violation of the Applicant's right to dignity and freedom from cruel, inhuman, or degrading punishment under Article 5 of the Charter.

On reparations, the Court, based on its jurisprudence, dismissed the Applicant's prayer for reparation in respect of material prejudice given that the claim was not substantiated.

On moral prejudice, the Court noted that the Applicant had suffered violations related to his rights to a fair trial, life, and dignity, which had caused significant psychological and physical suffering, including deteriorating health conditions and psychological distress due to prolonged detention and the imposition of the death penalty. Considering the gravity of these violations, the Court awarded the Applicant Tanzanian Shillings One Million (TZS 1,000,000) for moral damages. However, the Court dismissed the prayer for reparations for indirect victims, as the Applicant did not provide sufficient evidence of their dependency or the prejudice suffered.

On non-pecuniary reparations, the Court dismissed the Applicant's prayer to be set free given that the violations found did not impact the conviction and guilt. Conversely, the Court ordered the Respondent State to take all necessary measures to revoke the death penalty imposed on the Applicant and remove him from the death row. The Court further ordered the Respondent State to amend its laws and remove the mandatory death penalty and hanging as the method of execution. The Court ordered that the judgment should be published within three months and directed the Respondent State to report on the implementation of the orders every six months until they are fully implemented.

The Court finally ordered each Party to bear their own costs.

For further information:



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Further information on this case, including the entire text of the African Court's judgment, is available on the website:

<https://www.african-court.org/cpmt/details-case/0132018>

For all other enquiries, please contact the Registry by e-mail at registrar@african-court.org.

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