

ABDUL OMARY NONDO & OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION Nos. 040/2020 & 043/2020

(CONSOLIDATED APPLICATIONS)

JUDGMENT ON MERITS AND REPARATIONS

6 MARCH 2026

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

Arusha, 6 March 2026: The African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the case of *Abdul Omary Nondo & Others v. United Republic of Tanzania*.

Abdul Omary Nondo, Deusdedit Valentine Rweyemamu and Paul Revocatus Kaunda (hereinafter referred to as "the First Applicant," "the Second Applicant," and "the Third Applicant" respectively or "the Applicants" jointly) are all nationals of the United Republic of Tanzania ("the Respondent State"). They filed their Applications against the Respondent State challenging various provisions in the Tanzanian electoral laws. The Court, acting *suo motu*, ordered the joinder of the two Applications having noted the similarity of the Applicants' grievances and the reliefs sought.

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

Concerning the Court's jurisdiction, the Respondent State objected to the Court's temporal jurisdiction. Specifically, the Respondent State argued that the Applications were based on constitutional provisions adopted in 1977 and 1984, predating the entry into force 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"). Additionally, the Respondent

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State asserted that, at the material time, it had not made the Declaration under Article 34(6) of the Protocol.

Concerning the contention that the alleged violations predated the entry into force of the Protocol and the depositing of the Declaration, the Court reiterated its position that its temporal jurisdiction is determined from the date of the entry into force of the Protocol establishing it, and not from the date of the deposit of the Declaration, the latter only relating to its personal jurisdiction. The Court also noted that as an exception to this rule, it retains jurisdiction in instances where violations occurred before a State became a party to the African Charter on Human and Peoples' Rights ("the Charter") or the Protocol, but the alleged violations have persisted subsequent to the entry into force of the Charter and the Protocol.

In the circumstances, the Court found that the violations alleged by the Applicants were continuous thereby conferring it with temporal jurisdiction to hear and determine the Applications.

Even though other aspects of its jurisdiction were not contested by the Respondent State, the Court nevertheless examined them in accordance with Rule 49(1) of the Rules of the Court ("the Rules").

With respect to personal jurisdiction, the Court noted that the Respondent State deposited the Declaration under Article 34(6) of the Protocol, which allows individuals to file Applications against it, as per Article 5(3) of the Protocol. The Court further recalled that the Respondent State withdrew its Declaration on 21 November 2019. In connection to this, the Court underscored that the withdrawal of the Declaration did not affect the present Applications since it took effect on 22 November 2020, which was after the Applications had already been filed.

The Court further noted that given that the alleged violations pertained to rights enshrined in the Charter and the International Covenant on Civil and Political Rights (ICCPR), instruments to which the Respondent State is a Party, it possessed the necessary material jurisdiction to examine the Applications.

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Lastly, the Court found that it had territorial jurisdiction given that the facts of the matter occurred within the territory of the Respondent State.

On the admissibility of the Applications, the Court observed that pursuant to Article 6(2) of the Protocol, it must rule on the admissibility of all the Applications brought before it. The Respondent State raised an objection on the grounds that the Applicants failed to file the Application within a reasonable time in accordance with Article 56(6) of the Charter.

With regards to this objection, the Court observed that under Rule 50(2)(f) of the Rules, there are two elements that must be used in assessing the reasonableness of time for filing an Application. First, the Application must be filed within a reasonable time from the date local remedies were exhausted. Secondly, and alternatively, an Application must be filed within a reasonable time from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter.

In the instant application, the Court observed that the Applicants were not obliged to exhaust local remedies not only because there was none to exhaust but also because some of the alleged violations were continuous. Resultantly, therefore, computation of time could not be based on the exhaustion of local remedies since such exhaustion was irrelevant. As for the second limb, the Court observed that owing to its findings as to the continuous nature of the violations, the Applicants could have filed the Applications at any time for as long as the violations remained unremedied. The Court, therefore, held that the Application fulfilled the requirements on admissibility, and dismissed the Respondent State's objection.

The Court observed that no objection was 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 to ensure that the Application fulfilled the necessary standards.

Accordingly, the Court found that the condition stipulated under Rule 50(2)(a) of the Rules was met, as the Applicants were clearly identified by name.

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The Court also found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions, fulfilling the requirements 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, fulfilling the requirements of Rule 50(2)(d) of the Rules.

Further, the Court noted that the Applicants' claims sought to protect their rights guaranteed under the Charter. It further noted that nothing in the Application was incompatible with the Constitutive Act of the African Union. The Court, therefore, found that the Application met the requirements of Rule 50(2)(b) of the Rules.

The Court also found that the case had not been previously settled between the parties before another international tribunal and was thus in compliance with Rule 50(2)(g) of the Rules.

In relation to the exhaustion of local remedies, the Court recalled that the objective of the rule on exhaustion of local remedies under Rule 50(2)(e) of the Rules is to provide States with the opportunity to resolve cases of alleged human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility, in accordance with the principle of subsidiarity. The Court further recalled that the requirement for the exhaustion of local remedies is that an Applicant must have, at least in substance, presented the claims before the Court in the domestic courts. In the instant Application, the Court noted that the Applicants made five allegations against the electoral laws of the Respondent State. The Court assessed each of the allegations individually to determine whether the domestic remedies were exhausted.

Firstly, the Court considered the allegations relating to the composition of the Electoral Commission, which the Applicants alleged violated article 74(1) of the Respondent State's Constitution, Articles 1, 3, 13(1) of the Charter, Article 21 of the UDHR and Article 25 of the ICCPR. The Applicants submitted that they could not approach the High Court under the Basic Rights and Duties enforcement Act, given that the constitutional provisions they sought to challenge are outside of Chapter III of Part One of the Respondent State's Constitution.

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The Court noted that the Applicants' allegations revolving around the composition of the Electoral Commission, as at the time of the filing of the Application, were governed by both the Respondent State's Constitution and the National Elections Act. The Court observed that the Applicants never approached any domestic courts for the determination of their grievances, and thus held that the Applicants failed to exhaust domestic remedies in respect of their claims relating to Article 74(1) of the Respondent State's Constitution. The Court, therefore, held that the claim was inadmissible for failing to exhaust local remedies.

Secondly, the Court considered the issue of exhaustion of local remedies in relation to the allegation that the manner in which article 74(3) of the Respondent State's Constitution delineates those that are eligible to serve in the Electoral Commission contravenes the Applicants' rights under Articles 1, 3, 13(1) of the Charter, Article 21 of the UDHR and Article 25 of the ICCPR.

On this claim, the Court observed that the Applicants failed to demonstrate that they attempted to exhaust domestic remedies and held that the claim was inadmissible for failure to exhaust local remedies.

Thirdly, the Court considered whether the Applicants exhausted domestic remedies in relation to the removal of the members of the Electoral Commission. On this claim, the Applicants contended that article 74(5) of the Respondent State's Constitution compromises the independence of the Electoral Commission by giving the President the power to remove a member of the Electoral Commission from office on grounds that are subjective and unclear.

On this issue, the Court also noted that the Applicants did not provide any evidence to show that they exhausted domestic remedies, and held that the Application did not meet the requirements on exhaustion of local remedies in respect of this claim.

Fourthly, the Court considered whether the Application met the requirements on exhaustion of local remedies in respect of the allegations relating to the power of the courts to inquire into the actions of the Electoral Commission. The Applicants argued that article 74(12) of the Respondent State's constitution and article 119(13) of the Constitution of Zanzibar violate

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principles of equality before the law and equal protection of the law as provided for under Article 3 of the Charter and article 14(1) of the ICCPR. The Applicants further argued that the same provisions violate Article 7(1)(a) of the Charter and article 14(1) of the ICCPR by ousting the jurisdiction of the courts in the Respondent State.

In respect of this allegation, the Court recalled its earlier jurisprudence, noting that the provisions that oust the jurisdiction of the courts deprive litigants of remedies to exhaust. The Court found that given the provisions of article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar, the Applicants did not have a remedy that was available, sufficient and effective to exhaust before approaching the Court. The Court thus held that the Application met the admissibility requirements in respect of this claim.

Fifthly, the Court considered whether the Application met the admissibility requirements in relation to the claim that the prohibition to join political parties for persons involved in the management of elections violated Articles 1, 3, 13(1) of the Charter, Article 21 of the UDHR and Article 25 of the ICCPR.

With regard to this claim, the Court noted that the Applicants had failed to provide any evidence of the exhaustion of local remedies, or to demonstrate that the remedies were unavailable. The Court, therefore, found that the Applicants did not exhaust the domestic remedies on the allegations relating to article 74(14) of the Respondent State's Constitution, and held that the Application did not meet the requirement on exhaustion of domestic remedies.

Having assessed all the requirements relating to exhaustion of domestic remedies, the Court held that the Application fulfilled the said requirement only in respect of the allegations relating to article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar.

The Court then considered whether article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar violated the principles of equality before the law and equal protection of the law as protected under Article 3 of the Charter and Article 14(1) of the ICCPR. The Court also considered the allegation by the Applicants that the same

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constitutional provisions violate the right to have one's cause heard as protected under article 7 of the Charter.

On the alleged violation of the right to equality and equal protection of the law, the Court reiterated that the principle of equality in law presupposes that the law protects everyone without discrimination. The Court further recalled that, in relation to the provisions of article 74(12) of the Respondent State's Constitution and article 119(13) of the Constitution of Zanzibar, in *Jebra Kambole v. Tanzania*, it adjudicated upon similar provision in the Respondent State's Constitution, which ousted the jurisdiction of courts to consider any complaints related to the election of the President in the Respondent State. Such a provision was held to be a violation of the Charter in the absence of reasonable justification, necessity or proportionality within a democratic society. Applying similar reasoning the Court found that the contested constitutional provisions oust the jurisdiction of courts to review the acts by the Respondent State's National Electoral Commission (NEC) and the Zanzibar Electoral Commission (ZEC). The Court found that while the impugned provisions in principle apply to all citizens within the Respondent State, their practical effect is not uniform across the entire population. Such provisions, according to the Court, entail a disproportionate effect on individuals seeking legal redress for potential electoral grievances due to the inability of those individuals to challenge electoral decisions before a judicial body. The Court held, therefore, that article 74(12) of the Respondent State's constitution and article 119(13) of the Constitution of Zanzibar violate Article 3(2) of the Charter.

On the allegation of violation of the right to have one's cause heard, the Court recalled its earlier jurisprudence in *Jebra Kambole v. Tanzania*, where it found restrictions under article 41(7) of the Respondent State's Constitution to be inconsistent with Article 7(1)(a) of the Charter. The Court had, in *Jebra Kambole v. Tanzania*, emphasised that whenever a State imposes a restriction on fundamental rights, it bears the burden of proving that the restriction is legally prescribed under the law, serves a legitimate purpose, and is necessary and proportionate to achieving that purpose. Additionally, the Court had been emphatic that a State cannot invoke its internal laws to justify non-compliance with its international human rights obligations. Given the preceding, the Court found that the absence of judicial scrutiny of the NEC and the ZEC creates a risk of unchecked electoral irregularities, thereby undermining the

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rule of law. Consequently, the Court held that article 74(12) of the Respondent State's constitution and article 119(13) of the Constitution of Zanzibar, in so far as they exclude the jurisdiction of courts to review decisions of the NEC and the ZEC violate Article 7(1)(a) of the Charter.

On the alleged violation of Article 1 of the Charter, the Court recalled that when it finds that any of the rights, duties and freedoms under the Charter are curtailed, violated or not being achieved, it necessarily means that the obligations set out under Article 1 of the Charter have been violated. The Court thus held that the Respondent State violated Articles 3(2), 7(1)(a) and 1 of the Charter.

The Court, having found that parts of article 74(12) and article 119(13) violate Articles 3(2) and 7(1)(a) of the Charter, ordered the Respondent State to take all the necessary constitutional and legislative measures, within a reasonable time, and in any event within 24 months of notification of the decision, to ensure that these provisions are amended and aligned with the provisions of the Charter so as to eliminate the violations of Articles 3(2) and 7(1)(a) of the Charter as established by the Court.

The Court further ordered that the Respondent State publish this Judgment, both in Kiswahili and English, within a period of three months from the date of notification, on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication.

Concerning implementation and reporting, the Court ordered the Respondent State to submit to it within 12 months, from the date of notification of the judgment, a report on the status of implementation of the decision and thereafter, every six months until the Court considers that there has been full implementation thereof.

On the costs, the Court ordered that each Party bear its own costs.

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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/0402020>

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.