



AfCHPR

African Court on Human
and Peoples' Rights

Arusha, Tanzania

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JUDGMENT SUMMARY

LEGAL & HUMAN RIGHTS CENTRE AND LIBERATUS MWANG'OMBE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 041/2020

RULING ON JURISDICTION AND ADMISSIBILITY

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 *Legal & Human Rights Centre and Liberatus Mwang'Ombe v. The United Republic of Tanzania*.

The Application is filed by the Legal and Human Rights Center and Liberatus Mwang'ombe. Both the First and Second Applicants are hereinafter referred to jointly as the "Applicants".

The First Applicant is an independent, non-partisan and non-profit human rights organization which was granted observer status with the African Commission on Human and Peoples' Rights. The Second Applicant is a national of Tanzania, and a human rights' advocate. The Applicants alleged the violation of the right to register and to vote of thousands of detainees and citizens residing in the diaspora, in the presidential and national assembly elections.

The Applicants alleged that the United Republic of Tanzania (the Respondent State) violated of Articles 1, 2, 3 and 13(1) of African Charter on Human and Peoples' Rights (the Charter), Articles 2(1), 2(2), 7, 25(a) and (b) of the International Covenant on Civil and Political Rights (ICCPR), and Articles 2, 21(1) of the Universal Declaration of Human Rights (UDHR), as well as Articles 13(2) and (4) of the Tanzanian Constitution.



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Specifically, the Applicants alleged that the Respondent State has violated the rights of detainees, prisoners and citizens residing abroad to participate in government through Article 5(2)(c) of its Constitution, the National Elections Act (herein after referred to as “NEA”), and the failure to affirmatively provide for mechanisms enabling citizens residing abroad to vote.

In examining its jurisdiction, the Court noted that the Respondent State raised an objection to material jurisdiction. The Respondent State averred first, that the alleged violations fall within the jurisdiction of national courts; and, second, that the Court is being called to act as a court of first instance given that the Applicants had not approached domestic courts. The Applicants on their part submit that the Court cannot be said to be acting as a court of instance by examining the present Application, given the latter involves alleged violations rights protected by treaties to which the Respondent State is a party.

Regarding the objection that it lacks jurisdiction because the alleged violations fall strictly within the jurisdiction of national courts, the Court recalled its jurisprudence that it is not precluded from exercising material jurisdiction because issues brought before it had been adjudicated in domestic courts. The Court therefore held that its material jurisdiction is established so long as it is called upon to determine whether domestic proceedings were conducted in line with standards set out in the Charter and other human rights instruments ratified by the Respondent State. As a consequence, the Court dismissed the Respondent State’s objection that the Application related to issues which fall within the jurisdiction of national courts.

The Court then considered the second limb of the objection to its material jurisdiction based on it being asked to act as a court of first instance by examining allegations made with respect to the alleged prohibition against prisoners, detainees (accused persons) and citizens residing in diaspora from voting. In this regard, the Court reiterated its jurisprudence that in accordance with Article 3(1) of the Protocol, it had material jurisdiction to consider applications filed before it, provided that the allege



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violations of rights guaranteed in the Charter or any other human rights instruments ratified by the Respondent State.

Recalling that in the instant case, the Applicants alleged violations of rights protected under previously cited provisions of the Charter, ICCPR and UDHR, to to which the Respondent State is a party, the Court held that it cannot be said that it would be acting as a court of instance by examining the present Application. Accordingly, the Court equally dismissed this second limb of the objection.

In light of the foregoing, the Court dismissed the Respondent State's objection and held that it has material jurisdiction to determine the present Application.

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 Article 34(6) Declaration under 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 nature, and territorial jurisdiction as the violations occurred within the territory of the Respondent State. As a consequence of its findings on all aspects of its jurisdiction, the Court unanimously, declared that it has jurisdiction to hear the Application.

On admissibility, the Respondent State averred that the alleged prohibition involving prisoners and detainees' rights to vote had previously been subjected to domestic judicial scrutiny. It further averred that similar claims had been considered by its High Court in the public interest case of *Tito Elia Magoti and Another vs National Electoral Commission and 2 Others*, where that court declared the provisions of Section 11(1)(c) of the NEA unconstitutional and void. It submits that, in the case cited, an appeal is pending before the Court of Appeal whose outcome the Applicants in the present Application are obliged to await in order to fulfil the requirement of exhaustion of domestic remedies.



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On their part, the Applicants contended that they were unable to exhaust local remedies, as Article 74(12) of the Respondent State's Constitution bars anyone from challenging actions of the National Elections Commission (herein after referred to as "NEC"). They further contended that Section 4(2) of the Basic Rights and Duties Enforcement Act [CAP. 3 R.E. 2019] (herein after referred to as "BRADEA"), bars those who are not directly affected by the contravention of the provisions of Articles 12 to 29 of the Constitution from challenging these provisions in domestic courts. It was the Applicants' contention therefore that, since their Application before the African Court was on a public interest basis, they were unable to exhaust local remedies.

In addressing the Respondent State's objections to the admissibility of the Application based on non-exhaustion of local remedies, the Court recalled its jurisprudence that the requirement is to exhaust ordinary judicial remedies that offer a prospect of success; which also have to be available, effective, sufficient, and not unduly prolonged.

In applying these principles to the Application, the Court considered the two domestic remedies available to the Applicants, namely: i) challenging the constitutionality of the NEA; and ii) challenging the alleged restrictions under the BRADEA.

On challenging the constitutionality of the NEA, the Court considered the *Magoti* case relied on by the Respondent State where its High Court adjudicated on the voting restrictions imposed on remandees awaiting trial and prisoners, which issues also arise in this Application. The Court observed that both Applicants in the present Application had standing to challenge the constitutionality of the NEA given that Article 26(2) of the Respondent State's Constitution, provided access to "any person" in furtherance of the protection of the Constitution and the laws of the land. The Court therefore held that the Applicants did not exhaust the remedy of challenging the constitutionality of the NEA; and upheld the Respondent State's objection in this regard.



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On challenging the alleged restrictions under the BRADEA, the Court distinguished this Application from those adjudicated in its established case-law, where it held that the constitutional petition through the BRADEA is an extraordinary remedy. The distinguishing factor, the Court held, is that its case-law involved domestic criminal proceedings previously adjudicated by the highest court of the Respondent State. The Court recalled that, in those instances, it was unreasonable to require the same applicants to then lodge a fresh application regarding the violation of their human rights before a subordinate court. As opposed to such instances, the Court considered that the remedy of the constitutional petition under the BRADEA cannot be said to be extraordinary; and is rather an ordinary remedy.

Having found so, the Court set out to examine whether the Applicants in this Application had standing to file a petition under the BRADEA. The Court recalled its jurisprudence in the matter of *Centre for Human Rights and Others v. United Republic of Tanzania*, where it held that local remedies need not be exhausted in circumstances where NGOs representing the interests of individuals are proscribed from seizing the domestic courts of the Respondent State, as the local remedy is then considered unavailable. The Court further recalled its finding in the same case that in the domestic system of the Respondent State, anyone who could not demonstrate victimhood was barred from pursuing the petition under BRADEA.

In applying this precedent to the present Application, the Court noted that the Applicants did not have standing to make use of the petition under BRADEA. As a consequence, the Court held that this remedy was not available and should be considered as exhausted. It therefore, dismissed the Respondent State's objection in this regard. On the basis of the analysis, the Court held that the Application met the requirement of exhaustion of local remedies with regard to challenging the alleged restrictions under BRADEA.



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The Court proceeded to consider the other conditions for admissibility, ultimately holding that the Application met all other admissibility requirements. The Court thus declared the Application admissible.

Finally, the Court reserved its decision on the merits, reparations and costs of the proceedings.

For further information:

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/0412020>

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

The African Court on Human and Peoples' Rights is a continental Court established by African countries to protect Human and Peoples' Rights in Africa. The Court has jurisdiction over all cases and disputes brought before 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 visit our website www.african-court.org