

MOSES AMOS MWAKASINDILE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 045/2019

JUDGMENT SUMMARY

JUDGMENT ON MERITS AND REPARATIONS

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") delivered a judgment in the case of *Moses Amos Mwakasindile v. United Republic of Tanzania*.

Moses Amos Mwakasindile ("the Applicant") is a national of the United Republic of Tanzania ("the Respondent State"). At the time of filing the Application, the Applicant was serving a sentence of life imprisonment after having been tried and convicted of the offence of trafficking in narcotic drugs. He alleged violation of his rights during proceedings before national courts.

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

In its objection to the Court's material jurisdiction, the Respondent State argued that the Applicant was asking the Court to evaluate evidence adduced before its national courts, and in effect inviting the Court to exercise appellate jurisdiction.

In response to this contention, the Court held that in exercising its jurisdiction, in accordance with Article 3(1) of the Protocol, it does not operate as an appellate court. It further pointed out, that it is not barred from interrogating proceedings before the national

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courts and assessing their compliance with the Charter, the Protocol and other international human rights instruments ratified by a State. In the present case, the Court found that the rights alleged to have been violated are protected in the Charter to which the Respondent State is a party and thus the Court's material jurisdiction was established. The Respondent State's objection to the Court's material jurisdiction was thus dismissed.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them pursuant to Rule 49(1) of the Rules of Court ("the Rules"). Accordingly, the Court found that it has 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 it 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 September 2019.

The Court also found 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. The Court thus held that it had jurisdiction to hear the Application.

The Court noted that pursuant to Article 6(2) of the Protocol, it must rule on the admissibility of all cases filed before it. In the instant Application, the Respondent State raised the objection that the Applicants had not exhausted the local remedies. Specifically, the Respondent State argued that in addition to filing an appeal before the Court of Appeal, the Applicant ought to have filed a petition under Article 30(3) of its Constitution and section 4 of the Basic Rights and Duties Enforcement Act (BRDEA).

Regarding the Respondent State's objection on non-exhaustion of domestic remedies, the Court highlighted that under Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, any application filed before it must fulfil the requirement of exhaustion of local remedies unless the same are unavailable, ineffective and insufficient or the domestic proceedings to pursue them are unduly prolonged. In connection with the argument that the Applicant ought to have filed a constitutional petition under the BRDEA, the Court, invoking its earlier decisions, held that this remedy,

within the Respondent State's legal system, is an extraordinary remedy that no applicant is required to exhaust. The Respondent State's objection was thus dismissed.

The Court while observing that no objection had been raised with respect to the other admissibility requirements, nonetheless, in line with Rule 50(1) of the Rules, 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, and found that the Application fulfilled the necessary requirements.

The Court then considered whether the Respondent State had violated Articles 2, 4, 6, and 7 of the Charter.

On the alleged violation of the right to equality before the law and equal protection of the law, the Court noted that the burden of proof for a human rights violation rested with the Applicant unless the Court otherwise decided. In this Application, the Applicant alleged that his right to equality before the law and equal protection of the law was violated without providing any grounds to substantiate his claims. Consequently, the Court dismissed this allegation as being unsubstantiated.

Regarding the claim on the violation of the right to the respect of one's life and integrity of the person, the Court began by recalling that the right to life, under Article 4 of the Charter, is inviolable and shall be respected and not be arbitrarily deprived under any circumstances. The Court reiterated that the burden of substantiating a claim for a violation of a human right vests on anyone who alleges. The Applicant having failed to provide any ground or evidence to substantiate his allegations, the Court dismissed the claim.

Concerning the allegations of violation of the right to liberty and security of his person, the Court asserted that the Charter strictly prohibits any arbitrary arrest and detention. It reiterated its position in its earlier judgments that arrest or detention becomes arbitrary if it is not in accordance with the law, lacks clear and reasonable grounds or is conducted in the absence of procedural safeguards against arbitrariness. In this case, the Court found that the Applicant had made a general allegation of a violation of his rights under Article 6 of the Charter with no evidence to substantiate the allegations. Given the preceding, his allegations were dismissed.

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In relation to the alleged violation of the right to a fair trial, the Applicant enumerated four ways in which he believed his right was violated. First, he alleged that the exhibit of the drugs he was allegedly found in possession of was not listed as part of the evidence to be adduced during his trial. Second, he alleged that the chain of custody for the exhibits used against him was broken. Third, he contended that the search and seizure certificate was not signed by the driver of the Fuso bus on which he'd been arrested. Fourth, he averred that the caution statement was taken outside the mandatory four-hour period.

Having assessed all the evidence adduced by the Parties, the Court found that the Applicant was arrested, detained and subsequently charged with trafficking the narcotic drug *Catha edulis*. As the Court further noted, the number of the bundles of the *Catha edulis* had remained consistent throughout the trial process and that several documents including the expert opinion from a government chemist containing the relevant information were filed before the High Court. The Court further found that all the individuals who prepared these documents were subjected to cross examination and during this time any objection(s) in relation to the evidence could have been raised. The Court thus held that the Applicant had failed to substantiate his allegations.

As for the chain of custody, the Court found, from an analysis of the evidence before it, that there was no credible evidence to support the allegation that the chain of custody had been broken such as to violate the Applicant's rights. The Applicant's allegation was thus dismissed.

Concerning the allegation that the driver of the Fuso bus in which the Applicant had been arrested had not signed the search and seizure certificate, the Court highlighted that all the persons who had signed the seizure certificate, including the Applicant, were at the back of the vehicle while the driver was at the front. Consequently, the Applicant's allegations were dismissed.

Finally, regarding the Applicant's claim that his caution statement was taken outside the mandatory four-hour period after he was arrested, the Court analysed the timelines and found nothing to prove that an injustice was occasioned against the Applicant. Overall, therefore, the Court dismissed the Applicant's allegations of a violation of his right to fair trial.

On reparations, the Court dismissed the Applicants' prayers for reparations noting that no violation had been established such as to entitle the Applicant to reparations.

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

In accordance with Article 28(7) of the Protocol and Rule 70 of the Rules, the Separate Opinion of Judge Rafaâ BEN ACHOUR and the Joint Declaration of Judge Blaise TCHIKAYA and Judge Ntyam O. MENGUE are appended to the Judgment.

For any further information:

Further information on this case, including the full text of the African Court's judgment, is available on the website: <https://www.african-court.org/cpmt/details-case/0452019>

For any further questions, please contact the Registry at the following e-mail address: registrar@african-court.org

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