



AfCHPR

African Court on Human
and Peoples' Rights

Arusha, Tanzania

Website: www.african-court.org

Telephone: +255-272-510-510

JUDGMENT SUMMARY

**ELINAZI ELIABU ALIAS MSHANA
V. UNITED REPUBLIC OF TANZANIA**

APPLICATION NO. 060/2019

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 *Elinazi ELIABU alias MSHANA v. United Republic of Tanzania*.

Elinazi Eliabu *alias* Mshana ("the Applicant") is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application he was incarcerated at Ruanda Prison, at Mbeya, serving a 30-year sentence having been tried, convicted and sentenced for the offence of armed robbery. He alleges the violation of his rights during his arrest and before the national courts.

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

Concerning the Court's jurisdiction, the Respondent State raised an objection to the Court's material jurisdiction. Specifically, the Respondent State contended that this Court was seized to sit as an appellate court, while it does not have such jurisdiction. According to the Respondent State, the Applicant was inviting this Court to quash the decisions of the Respondent State's domestic courts, while it lacks jurisdiction to do so.

With regard to the contention that the Court would be exercising appellate jurisdiction, the Court reiterated its jurisprudence that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. At the same time, however, and even though the it is not an appellate court vis-à-vis domestic courts, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights

JUDGMENT SUMMARY

instruments ratified by the State concerned. In conducting the aforementioned task, the Court held, it does not thereby become an appellate court.

As to the Respondent State's objection that the Court lacked jurisdiction to quash the decisions of its domestic courts, the Court recalled Article 27(1) of the Protocol to the African Charter of Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), and concluded that it has jurisdiction to grant different types of reparations, including an order to declare proceedings in the national courts null and void, an order to annul a conviction and sentence, and to order the release of an Applicant from prison, provided that the alleged violation has been established.

The Court further noted that given that the alleged violations presented before it pertained to rights enshrined in the African Charter on Human and Peoples' Rights (the Charter), to which the Respondent State is a Party, it possessed the necessary material jurisdiction to examine the Application.

For these reasons, the Court dismissed the Respondent State's objection to its material jurisdiction.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. In this regard, the Court found that it had 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 the Respondent State 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 and that this Application was filed on 15 November 2019, that is, before the Respondent State's withdrawal of its Declaration.

The Court also held 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, which is a party to the Charter and Protocol.

The Court observed that pursuant to Article 6(2) of the Protocol, it must rule on the admissibility of all cases brought before it. In respect of this Application, the Respondent State raised an objection to the admissibility of the Application based on the non-exhaustion of local remedies.

Regarding the Respondent State's objection that the Applicant failed to exhaust local remedies, the Court found that the Applicant had exhausted local remedies since the Respondent State's Court of Appeal, the highest judicial organ in the Respondent State, had upheld his conviction and sentence, following proceedings in which the Respondent State had the opportunity to address the violations alleged by the Applicant as arising from his trial and appeals. For this reason, the Court dismissed the Respondent State's objections to the admissibility of the Application.

The Court observed that no objection had been raised with respect to the other admissibility requirements, nonetheless, in line with Rule 50(1) of the Rules of Court (the Rules), it 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, to ensure that the Application fulfilled the necessary standards.

Accordingly, the Court held that the Applicant had been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules. It also held that the allegations by the Applicant sought to protect his 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 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.

With regard to the requirement that the Application be submitted within a reasonable time, the Court noted that the final decision of the Court of Appeal of Tanzania was delivered on 30 August 2019 and the Applicant filed his Application before this Court on 15 November 2019,

JUDGMENT SUMMARY

so that a period of two months and 16 days thus lapsed. The Court found that the period of two months and 16 days is manifestly reasonable within the meaning of Rule 50(2)(f).

Lastly, the Court found that the case had not been previously settled before another international tribunal and was thus in compliance with Rule 50(2)(g) of the Rules. Therefore, the Court concluded that the Application was admissible.

The Court then considered whether the Respondent State violated the Applicant's right to a fair trial, his right to be tried within reasonable time, his right to dignity and prohibition against torture, degrading and inhuman treatment, and his right to liberty, protected under Articles 7, 7(1)(d), 5 and 6 of the Charter, respectively. The Court observed, however, that the main contention in the Application centred on Article 7(1) of the Charter, the Applicant's right to have his cause heard, which includes his right to be tried within reasonable time, hence, this alleged violation was addressed first.

The Applicant raised two grievances against the domestic courts whose actions or omissions he claims violated his rights. These grievances concern (i) the evidence upon which the conviction was based, and (ii) the duration of the proceedings before the national courts.

On the allegation relating to the evidence upon which the conviction was based, the Court recalled its earlier decisions, where it noted that domestic courts enjoy a wide margin of appreciation in evaluating the probative value of particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings. However, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the assessment of the evidence, were conducted in consonance with international human rights standards. In the instant case, after close examination of the record, the Court noted that the High Court and the Court of Appeal took time to consider, assess and confirm the credibility of the evidence, including in particular the issue of identification by the witnesses, and found that the charges against the Applicant were proven beyond reasonable doubt. The Court, therefore, considered that the manner in which the proceedings before the domestic courts were conducted, including the consideration of the evidence, revealed no manifest errors or miscarriage of justice requiring its intervention.

JUDGMENT SUMMARY

The Court, accordingly, dismissed the Applicant's allegations and held that the Respondent State did not violate his right to be heard, protected under Article 7(1) of the Charter.

On the allegation relating to the right to be tried within a reasonable time, the Court recalled its previous decision in *Wilfred Onyango Nganyi and 9 Others v. Tanzania*, where it held that "... there is no standard period that is considered reasonable for a court to dispose of a matter. In determining whether time is reasonable or not, each case must be treated on its own merits." The Court further noted that various factors are taken in to consideration in assessing whether a case was disposed of within a reasonable time within the meaning of Article 7(1)(d) of the Charter. These factors include the complexity of the case, the behaviour of the parties and the behaviour of the authorities. In the present case, the Court observed that the Applicant contested the total duration of the time it took to finalise his trial and appellate proceedings as well as the time it took between his arrest and his arraignment in court. After examining the different elements, the Court considered that the period to finalise the Applicant's trial and appellate proceedings could not be found to be unreasonable and, therefore, held that the Respondent State did not violate the Applicant's right to be tried within a reasonable time, guaranteed under Article 7(1)(d) of the Charter. As to the time taken between the Applicant's arrest and his arraignment in court, the Court found that, in the particular circumstances of this case, the period taken to arraign the Applicant in court was not unreasonable and, therefore, held that the Respondent State did not violate the Applicant's right to be tried within reasonable time, protected under Article 7(1)(d) of the Charter.

On the alleged violation of the right to dignity and prohibition against torture, degrading and inhuman treatment, the Court considered that the Applicant claimed that his arrest was unlawful because the police allegedly used torture when arresting him. The Court also took note that the Respondent State's law, under Section 21 of the Criminal Procedure Act, permits police officers to use force during an arrest, provided that no more force is used or that the person is not subjected to greater indignity than is necessary, to make the arrest or to prevent the escape of the person after he has been arrested. The Court also considered, from the record, that the Applicant tried to evade arrest by running away and that he continued running even after a warning shot was fired and that he was eventually shot in the leg in order to be apprehended. The Court, furthermore, observed that the Applicant did not provide proof or substantiate the allegation that excessive force was used or that he was treated with greater

JUDGMENT SUMMARY

indignity than necessary at the time of his arrest. In these circumstances, the Court held that the Respondent State did not violate the Applicant's right to dignity and prohibition against torture, degrading and inhuman treatment, guaranteed under Article 5 of the Charter, with regard to the force used by the police during his arrest.

On the alleged violation of the right to liberty, the Court noted that the Applicant claims he was arbitrarily arrested, detained in police custody and finally imprisoned for 30 years, without any reasonable cause and based on unproven facts. The Court further observed from the record and the determination of the foregoing allegations of violations of rights, that the Applicant had not provided evidence to show and prove to the Court that he was arbitrarily arrested, detained and imprisoned, amounting to a violation of his right to liberty. In these circumstances, the Court found that there was no basis to find a violation and held that the Respondent State did not violate the Applicant's right to liberty, protected under Article 6 of the Charter, with regard to his arrest, detention and imprisonment.

Having found that the Respondent State did not violate any of the Applicant's rights, the Court dismissed the Applicant's prayers for reparations. As to costs, the Court decided that each party should bear its own costs.

Judge Rafaâ BEN ACHOUR issued a separate opinion, in accordance with Article 28(7) of the Protocol and Rule 70(2) of the Rules of Court.

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/0602019>

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.