

**IDD KITURE
V.
UNITED REPUBLIC OF TANZANIA**

APPLICATION NO. 010/2019

JUDGMENT ON MERITS AND REPARATIONS

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

Arusha, 5 June 2026: The African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the case of *Idd Kiture v. United Republic of Tanzania*.

Idd Kiture (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing this Application, he was incarcerated at Ukonga Central Prison, Dar es Salaam, Tanzania, having been tried, convicted and sentenced to 30 years of imprisonment for the offence of rape of a minor and for committing an unnatural offence. He alleged violation of his rights during proceedings before the national courts.

The Respondent State raised an objection to the Court's material jurisdiction on two grounds, First, that the Court is not vested with jurisdiction to entertain this Application and second, that the interpretation and application of the of the African Charter on Human and Peoples' Rights (the Charter) and 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) does not confer jurisdiction on the Court to set the Applicant at liberty.

With regard to the first limb of the objection, the Court recalled that under Article 3(1) of the Protocol, it has jurisdiction to determine allegations concerning the interpretation and application of the Charter and other human rights instruments ratified by the Respondent State.

The Court recalled that in the instant matter, the Applicant alleged violations of Articles 2, 3, 7(a), 7(c) and 7(d) of the Charter, which is an instrument that the Respondent State has ratified. Accordingly, the Court dismissed the Respondent State's objection to its material jurisdiction in this respect.

With regard to the second limb of the objection, that the Court lacked jurisdiction to order the Applicant's release from prison, it recalled that Article 27(1) of the Protocol enables it to make appropriate orders to remedy a violation, including the release of an applicant from prison, provided that the alleged violation has been established. The Court therefore, dismissed the Respondent State's objection regarding this aspect and held that it had material jurisdiction to hear this Application.

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 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 it in accordance with 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 22 March 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 and the violations stemmed from the Applicant's trial and conviction, which took place after the Respondent State became a party to the Protocol. Furthermore, the Applicant remains incarcerated based on what he considers an unfair process, the violations are deemed continuing in nature. Lastly, it found that it had territorial jurisdiction because the alleged violations occurred within the Respondent State's territory. In light of all the above, the Court held that it has jurisdiction to determine the present 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, it noted that the Respondent State raised an objection that the Applicant had not exhausted the local remedies available within its legal system as envisaged under Rule 50(2)(e) of the Rules. Specifically, that if the Applicant was aggrieved by the judgment of the Court of Appeal, he should have instituted an application for review of the decision of the Court of Appeal as provided under the Court of Appeal Rules. On his part, the Applicant contended that he filed his application after exhausting domestic remedies since the case was considered and dismissed by the highest court in the Respondent State.

The Court, in response to this objection, observed 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. Furthermore, the Court noted that the Applicant's case was considered successively by the District Court at Morogoro, the High Court at Dar es Salaam, and finally by the Court of Appeal which rendered their decisions on 20 July 2010, 7 September 2010; and 14 November 2014, respectively. Given that the Court of Appeal, is the highest judicial

body within the Respondent State's legal system, the Court found that the Applicant had exhausted domestic remedies.

Recalling its jurisprudence, the Court reiterated that the remedy of review of the Court of Appeal's decision as provided for within the Respondent State was an extraordinary remedy that the Applicant need not have exhausted as envisaged under Article 56(5) of the Charter and as restated in Rule 50(2)(e) of the Rules. Resultantly, the Court dismissed the Respondent State's objection to the admissibility of the Application based on non-exhaustion of local remedies. While observing that no objection had been raised with respect to the other admissibility requirements, the Court nonetheless, assessed all the admissibility criteria provided for in Rule 50(2) of the Rules.

The Court found that the Applicant had been 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 were 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, in fulfilment of Rule 50(2)(d) of the Rules. Resultantly, the Court declared the Application admissible.

Turning to the merits of the case, the Court then considered whether the Respondent State had violated Articles 2, 3, 7 (1) (a), 7(1) (d) and 5 of the Charter, respectively as alleged by the Applicant.

On the first allegation that the Applicants right to non-discrimination, equality before the law and equal protection of the law as provided for under Articles 2 and 3 of the Charter was violated, the Court recalled its jurisprudence that the burden of proof for a human rights violation rests with the person making the allegations, unless the Court decides otherwise. In the instant Application, the Court observed

that the Applicant made the allegations without substantiating his claims. Consequently, the Court dismissed this allegation for being unsubstantiated with respect to the alleged violations of Articles 2 and 3 of the Charter.

Considering the Applicant's second allegation that the Respondent State violated his right to appeal to competent national organs as guaranteed under Article 7(1)(a) of the Charter, the Court reiterated its jurisprudence that general statements that a right has been violated are not sufficient, and more substantiation is required. The Court having found that the Applicant failed to demonstrate how this right was violated and further, noting that the Applicant had exercised his right to appeal the decision of the trial court up to the Court of Appeal, which is the highest Court in the Respondent State, found that the Respondent State did not violate the Applicant's right to appeal to competent national organs guaranteed under Article 7(1)(a) of the Charter.

The Court then considered the Applicant's third allegation that he was denied legal representation during his interrogation at the police station and throughout his trial contrary to Article 7(1)(c) of the Charter. The Court considered that Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal assistance but that Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) to which the Respondent State is a State Party, does so explicitly.

The Court observed, from the record of proceedings, and from the decisions of the domestic courts that the Applicant was not provided with legal representation, yet, he was charged with a serious offence of rape of a minor (12 years old), which carries a sentence of 30 years imprisonment upon conviction. Recalling its jurisprudence, the Court found that in such circumstances and in the interest of justice, free legal assistance should have been provided by the Respondent State whether the Applicant requests for it, and this should not have been contingent on the availability of financial resources. Consequently, the Court held that the Respondent State had violated the Applicant's right to legal representation as

guaranteed under Article 7(1)(c) of the Charter as read jointly with Article 14(3) (d) of the ICCPR.

On the fourth claim that the Respondent State unduly prolonged the trial of the Applicant, contrary to the provisions of Article 7(1)(d) of the Charter, the Court found it necessary to invoke Article 9(3) of the ICCPR, although it was not raised by the Applicant, since it had more explicit provisions regarding this right. In considering this allegation, the Court categorized the alleged delay in two parts, namely: the duration of the pre-trial detention and the delay during the entire period of the proceedings before the national courts.

On the pre-trial detention, the Court noted that this did not exceed 48 hours, which it considered to be reasonable in light of the gravity of the offence of rape and the resultant investigations and medical examinations that had to be conducted by the police authorities. In light of the above, the Court found that the Respondent State did not violate the Applicant's right to be tried within a reasonable time as guaranteed under Article 7(1)(d) of the Charter as read jointly with Article 9(3) of the ICCPR with regard to pre-trial detention.

Concerning the alleged delay of the totality of the proceedings before the domestic courts from the District Court at Morogoro to the finalisation of the case, when the Court of Appeal rendered its decision, a period of six years (6), five (5) months and one day (1) had elapsed. Similarly, the Court recalled its jurisprudence that while some delays can be attributed to procedural requests by the Applicant, the responsibility to ensure that justice is delivered without undue delay ultimately rests with the State.

The Court observed that the case was not a complex one as it did not require adducing or considering specialised evidence such as taking DNA samples and a medical report of the raped victim was tendered as evidence by the prosecution, which was not contested by the Applicant. In addition, the prosecution had 4 witnesses while the Applicant had only 1 witness who testified. The Court also

observed that the case was adjourned on multiple occasions during the proceedings before the District Court, upon the request of the Respondent State. Moreover, the District Court granted the Applicant's prayer to start the case *de novo* when a new judge took over the case. This resulted in the fresh testimony of all the prosecution witnesses who had previously testified.

Consequently, the Court found 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 regarding the period of proceedings before the domestic courts of six years, five months and one day.

Regarding the Applicant's fifth alleged violation on his right to a fair trial contrary to the provisions of Article 7(1) of the Charter because he was convicted on the basis of a defective charge sheet, the Respondent State submitted that, the allegation touched on evidentiary matters which this Court does not have jurisdiction to consider. The Respondent State argued that should the Court consider evidentiary matters, it would be sitting as an appellate court with regard to matters which were already decided by the highest court in the Respondent State, the Court of Appeal of Tanzania. The Court observed that Article 7(1) of the Charter guarantees the protection of fair trial rights, however, it considered it necessary to invoke Article 14 of the ICCPR, which deals with the said right in greater detail. The Court found that the failure of the Respondent State to record the offence on the Applicant's charge sheet was a procedural irregularity, which however, did not result in a miscarriage of justice, since the Applicant was able to understand the offence with which he was charged and to also take plea. Consequently, the Court held that the Respondent State did not violate the Applicant's right to a fair trial guaranteed under Article 7(1) of the Charter as read together with Article 14 of the ICCPR with regard to the allegation on charging the Applicant using a defective charge sheet.

On the sixth and last alleged violation of the Applicant's right to dignity, protected under Article 5 of the Charter, the Applicant claimed that he was brutalized and

beaten during police interrogation when he was recording his statement. The Court reiterated its jurisprudence, that the burden of substantiating a claim for a violation of a human right rests with the person making the allegation. Although not relied on by the Applicant, the Court found invoked Articles 1 and 12 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the UNCAT), which deals with the said right in a greater detail. The Court recalled that general statements that a right has been violated are not sufficient for it to establish a violation. Since the Applicant had not provided proof of the violation of his right to dignity the Court held that the Respondent State did not violate the Applicant's right not to be subjected to cruel, inhuman and degrading treatment as provided under Article 5 of the Charter and Articles 1 and 12 of the UNCAT.

On reparations, the Court reiterated that if a violation is established, Article 27(1) of the Protocol empowers it to order an appropriate remedy. In the instant case the violation of the Applicant's right to free legal representation as guaranteed under Article 7(1)(c) of the Charter read together with Article 14(3) (d) of ICCPR was established. The Applicant had, however, failed to establish a link between the violation established and the prejudice suffered. The Court, therefore, rejected this claim for reparations for material prejudice. However, the Court awarded the Applicant a symbolic amount of Tanzanian Shillings Five hundred (TZS 500) for moral prejudice arising from the violation of the right to free legal representation.

The Court dismissed the Applicant's prayer regarding the quashing of his conviction and sentence and setting him free, noting that although a violation of the Applicant's right to free legal assistance was established, it had no impact on the Applicants' conviction, sentence and incarceration. As such, there was no justification or compelling circumstance to warrant the vitiation of the conviction and the quashing of the sentence and setting the Applicant free.

On implementation and reporting, the Court, ordered the Respondent State to submit to it, within six (6) months from the date of notification of the judgment, a report on the status of implementation of the orders every six (6) months, until the Court considers that there had been full implementation thereof.

Each party was ordered to bear its own costs.

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/0102019>

For any other queries, please contact the Registry via email at: 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. Additional information can be found on the Courts website at www.african-court.org.