

EVODIUS RUTECHURA v. UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 004/2016
JUDGMENT ON MERITS

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

Date of Press Release: 26 February 2021

Arusha, 26 February 2021: The African Court on Human and Peoples' Rights (the Court) delivered a judgment in the case of *Evodius Rutechura v. United Republic of Tanzania*.

Evodius Rutechura (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was on death-row at Butimba Prison, having been convicted of murder. The Applicant alleged that the Respondent State violated his rights under Articles 7(1) and 7(1)(c) of the African Charter on Human and Peoples' Rights (the Charter) by dismissing his application for review outside time; by failing to provide him with free legal representation of his choice and by failing to properly assess the evidence relied upon to convict him. He sought reparations to redress these alleged violations.

The Court observed that, as per Article 3(1) 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), it had to, preliminarily, determine whether it had jurisdiction to hear the Application. In respect of its jurisdiction, the Court noted that the Respondent State raised an objection to its material jurisdiction.

The Respondent State argued that the Court was not vested with jurisdiction to deal with the Application since the Applicant was inviting it to sit as an appellate court. The Court held that it is empowered to determine whether the proceedings in the national courts are in conformity with human rights instruments ratified by the State concerned and by doing so, it is not sitting as an appellate Court. It further held that, since the Application alleged violations of rights provided for in the Charter to which the Respondent State is a Party then it had material jurisdiction.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. The Court held 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 and this Declaration allowed individuals to file applications against it as per Article 5(3) of the Protocol. The Court also noted that it had decided that the Respondent State's withdrawal of its Declaration, on 21 November

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2019, did not affect Applications like the present one which had been filed before the withdrawal took effect on 22 November 2020.

The Court held that it had temporal jurisdiction because the alleged violations were continuous in nature; and lastly, that it had territorial jurisdiction, given that the alleged violations occurred within the territory of the Respondent State which is a Party to the Protocol. The Court thus held that it had jurisdiction to examine the Application.

In terms of the admissibility of the Application, the Court, as empowered by Article 6 of the Protocol, had to determine whether the requirements of admissibility, as provided under Article 56 of the Charter and Rule 50 of the Rules of Court ("the Rules"), had been met. In this connection, the Court first considered two (2) objections raised by the Respondent State.

The first objection related to the Applicants' failure to exhaust local remedies before filing the Application as required by Article 56(5) of the Charter and Rule 50(2)(e) of the Rules of Court. On this point, the Respondent State argued that the Applicant only raised one ground of appeal before the Court of Appeal and thus did not fully utilise that remedy.

The Court dismissed the Respondent State's contention noting that the Applicant, having seized the Court of Appeal, the highest judicial organ of the Respondent State, had exhausted local remedies. The Court noted that, the Respondent State thus had the opportunity to redress the alleged violations but failed to do so.

The Respondent State also claimed that the Application was inadmissible because the Applicant took an unreasonable time, that is, five (5) years and six (6) months to bring his claim to the Court. The Court dismissed this objection on the grounds that the Applicant was on death-row, restricted in movement, with limited access to information, and had twice sought a review of his conviction and sentence. The Court noted that, owing to the applications for review filed by the Applicant, the time taken to seize the Court would no longer be considered to be five (5) years and six (6) months, but rather seven (7) months and five (5) days and that this time was reasonable. The Court was also satisfied that the record showed that all other conditions of admissibility as set out in Article 56 of the Charter and Rule 50(2) of the Rules had been complied with and declared the Application admissible.

The Court then considered whether the Respondent State violated the Applicants' rights under Articles 7(1) and 7(1)(c) of the Charter by examining three issues.

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The first issue was whether the Applicant's right to a fair trial was violated, by the domestic courts dismissing his application for leave to file for review out of time. The Court held that the manner in which the application for leave to file for review out of time was handled in the national courts did not disclose any manifest error or miscarriage of justice to require its intervention. The Court noted that the Court of Appeal had dismissed his application in accordance with its Rules because, it did not demonstrate prospects of success. The Court therefore dismissed this allegation.

Secondly, the Court determined whether the Applicant was denied free legal assistance of his choice in violation of the Charter. The Court found that the Applicant had been provided with free legal assistance. Further, the Court also held that the right to free legal assistance of one's choosing is not absolute but rather, the important consideration was that the Applicant was effectively represented. Therefore, the Court dismissed this allegation because there was nothing on record to indicate that the Applicant was not effectively represented by the lawyers provided for him by the State. Furthermore, the Applicant had not substantiated his claim.

Finally, the Court considered whether the manner of the evaluation of evidence by the Court of Appeal was proper. The Court found that in assessing the probative value of the said evidence, the national courts followed the procedures in this regard according to the applicable laws. Therefore, the Court dismissed this allegation.

Having found that there were no violations of the Applicant's rights, the Court dismissed the Applicant's prayers for reparations. Each Party was also ordered to bear its own costs.

Justice Blaise Tchikaya issued a Separate Opinion in which he discussed the need for the Respondent State to gradually develop its laws towards the abolition of the death penalty in line with developing international practice.

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/0042016>

For any other queries, please contact the Registry by email registrar@african-court.org.



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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.