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PRESS RELEASE
JUDGMENT SUMMARY

MUSSA ZANZIBAR V UNITED REPUBLIC OF TANZANIA
APPLICATION NO. 022/2016
JUDGMENT ON MERITS AND REPARATIONS
26 FEBRUARY 2021

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 *Mussa Zanzibar v. United Republic of Tanzania*.

Mussa Zanzibar (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 thirty (30) years imprisonment after having been convicted and sentenced for rape.

In his Application, the Applicant made three allegations: first, that the trial court erred in convicting him on the basis of the evidence of a single witness without satisfying itself that the witness was telling the truth; second, that the trial court erred by failing to resolve the contradictions and inconsistencies in the prosecution evidence; and lastly, that the trial court failed to warn itself of the need for evidence beyond reasonable doubt before convicting him.

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 both as a court of first instance as well as an appellate court.

In relation to the allegation that the Court was being invited to sit as a court of first instance, the Court affirmed that its jurisdiction, under Article 3 of the Protocol, extends to any application submitted to it, provided that an applicant invokes a violation of rights protected by the Charter or any other human rights instrument ratified by the Respondent State. Even though the Applicant did not specify the particular provisions of the Charter or any other international human rights instrument allegedly violated by the Respondent State, the Court reiterated the fact that it has jurisdiction to examine alleged violations of human rights, even when an applicant does not specify the articles of the Charter which were allegedly violated, as long as the alleged violations substantively implicate rights protected in the Charter.

As regards the contention that the Court would be exercising appellate jurisdiction by examining certain claims which were already determined by the Respondent State's domestic courts, the Court reiterated its position that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. At the same time, however, and even though it is not an appellate court vis a vis domestic courts, it retains the power to assess the propriety of domestic proceedings as against standards set out in international human rights instruments ratified by the State concerned. In considering the allegations made by the Applicant, which all implicated the right to a fair trial, which is protected under Article 7 of the Charter, the Court held that the said allegations were within the purview of its material jurisdiction. The Court, therefore, concluded that it had material jurisdiction and dismissed the Respondent State's objection.

Although other aspects of its jurisdiction were not questioned by either of the Parties, 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 2019, did not affect Applications like the present one which had been filed before the withdrawal took effect on 22 November 2020.

In respect of its temporal jurisdiction, the Court noted that the Respondent State deposited its Declaration on 29 March 2010 while the judgment of the District Court at Chato, which was the

genesis of the Applicant's case, was delivered on 6 October 2011. Given that the Application was filed after the Respondent State had already deposited its Declaration, the Court held that it had temporal jurisdiction to examine the Application.

As for its territorial jurisdiction, the Court noted that the violations alleged by the Applicants happened within the territory of the Respondent State. In the circumstances, the Court held that it had territorial jurisdiction to hear the matter.

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 considered the two (2) objections raised by the Respondent State, relating, first, to the requirement of exhaustion of local remedies, and, second, to the time within which the Application was filed.

On the objection due to a failure to exhaust local remedies, the Respondent State contended that although the Applicant alleged violation of his rights as provided under the Charter, which rights are also provided for under its Constitution, there was no evidence showing that the Applicant had filed a constitutional petition at its High Court. The failure to file a constitutional petition, the Respondent State further contended, was proof of failure to exhaust local remedies. The Court, while confirming that the rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same, held that an applicant is only required to exhaust ordinary judicial remedies. The Court then reiterated its position that the remedy of constitutional petition, as framed in the Respondent State's judicial system, is an extraordinary remedy that an applicant is not required to exhaust prior to seizing the Court. The Court also noted that the Court of Appeal dismissed the Applicant's appeal on 10 March 2014 and the Court of Appeal being the highest Court in the Respondent State, the Applicant had exhausted ordinary judicial remedies. Given the foregoing, the Court dismissed the Respondent State's objection alleging non-exhaustion of local remedies.

In relation to the objection that the Application was not filed within a reasonable time after the exhaustion of domestic remedies, the Respondent State argued that it took two (2) years after the Court of Appeal dismissed the Applicant's appeal for him to file his Application. It thus submitted that this period was not reasonable within the meaning envisaged in the Rules. The Court recalled that neither the Charter nor the Rules set a definite time limit within which an application must be filed before it. According to the Court, both Article 56(6) of the Charter and Rule 50(2)(f) of the Rules, simply allude to the fact that applications must be filed within a reasonable time after the exhaustion of domestic remedies or "from the date the Commission is seized with the matter." Accordingly, the Court held that the reasonableness of a time limit for seizure depends on the particular circumstances of each case and should be determined on a case by case basis. In the present case, the Court noted that the Court of Appeal dismissed the Applicant's appeal on 10 March 2014 and the Applicant filed this matter on 13 April 2016. A period of two (2) years and thirty-three (33) days, therefore, lapsed between the time the Applicant exhausted domestic remedies and the time he filed his Application. The Court also noted that the Applicant filed this Application from prison and he conducted his case without the assistance of counsel. Given the Applicant's incarceration and his lack of counsel, the Court held that the period of two (2) years and thirty-three (33) days is reasonable. The Court, therefore, dismissed the Respondent State's objection based on failure to file the Application within a reasonable time.

The Court also satisfied itself that the Application had complied with all the other conditions of admissibility set out under Article 56 of the Charter and Rule 50 of the Rules before declaring the Application admissible.

In respect of the merits of the Application, the Court first considered whether the domestic proceedings involving the Applicant were flawed due to the partial assessment of the evidence. While conceding that domestic courts possess a significant margin of appreciation in evaluating the probative value of the evidence presented before them, the Court emphasised that it still retains a role in assessing whether the proceedings before domestic courts were conducted in consonance with international human rights standards. In the present Application, the Court having considered the record of the Applicant's trial before the District Court, the High Court and the Court of Appeal concluded that there was no basis for interfering with the findings of the municipal courts. The Court thus dismissed the Applicant's allegation of a violation of his right to fair trial by reason of a partial assessment of the evidence.

Although the Applicant did not specifically plead a violation of his right to free legal assistance, the Court noted that the Applicant did not have the benefit of counsel during proceedings before the District Court, the High Court as well as the Court of Appeal. Given the Applicant's prayer that the Court should "restore justice where it was overlooked", the Court examined whether the Applicant's right to free legal assistance was violated.

The Court noted that Article 7(1)(c) of the Charter does not explicitly provide for the right to free legal assistance. Nevertheless, the Court recalled that it has previously interpreted Article 7(1)(c) in light of Article 14 (3) (d) of the International Covenant on Civil and Political Rights (ICCPR) and determined that the right to defence includes the right to be provided with free legal assistance. In the instant case, the Court noted that the Applicant was charged with a serious offence, that is, rape, carrying a severe punishment - a minimum sentence of thirty (30) years' imprisonment. In the circumstances, the Court held that the interests of justice warranted that the Applicant should have been provided with free legal assistance during his trial before the District Court and also during his appeals before the High Court and Court of Appeal. The fact that the Applicant never requested for legal assistance did not absolve the Respondent State from its responsibility. In view of the above, the Court held that the Respondent State violated Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, due to its failure to provide the Applicant with free legal assistance

In respect of the Applicant's claim for reparations, the Court acknowledged that although Article 27 empowers it to "make appropriate orders" to remedy the violation of human rights, in line with its jurisprudence, it can only order the release of a convict in exceptional and compelling circumstances. In the present case, however, the Applicant did not establish the existence of any exceptional circumstances that would necessitate the Court ordering his release. The Applicant's prayer for release was, therefore, dismissed.

However, having found that the Applicant's right to free legal assistance was violated, contrary to Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, the Court held that there is a presumption that the Applicant suffered moral prejudice. Consequently, the Court awarded the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300 000) as fair compensation.

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/0222016>

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

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