



Arusha, Tanzania

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**PRESS RELEASE  
JUDGMENT SUMMARY**

**ALMAS MOHAMED MUWINDA AND OTHERS V. UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 030/2017**

**JUDGMENT ON MERITS AND REPARATIONS**

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

**Date of Press Release: 24 March 2022**

**Arusha, 24 March 2022:** The African Court on Human and Peoples' Rights (the Court or the African Court), today, delivered a Judgment in the case of *Almas Mohamed Muwinda and others v. United Republic of Tanzania*.

Almas Mohamed Muwinda and others (the Applicants) are all nationals of the United Republic of Tanzania (the Respondent State) and former employees of Urafiki Textile Mills (UTM), a government owned company that was dissolved in 1997. They brought this action alleging a violation of their right to work as well as their right to non-discrimination.

Before considering whether it had jurisdiction or if the Application was admissible, the Court noted that the Respondent State had not filed any pleadings. The Court, therefore, first, had to resolve the default of the Respondent State to file pleadings in the matter. The Court noted that default by a party is dealt with under Rule 63 of the Rules of Court (the Rules). Specifically, the Court pointed out that Rule 63 of the Rules sets out three conditions that must be satisfied before it can utilise the default judgment procedure, and these are: first, the default of one of the parties; second, the request made by the other party or on its own motion; and, third, the notification to the defaulting party of both the application and documents on file. The Court then considered whether each of the three conditions set out in Rule 63 were satisfied.

As to the first condition, the Court recalled that the Application was filed on 25 September 2017 and that from 23 February 2018, the date of service of the Application, to the date of close of pleadings, the Registry notified the Respondent State of all pleadings filed by the Applicant. The Court thus concluded that the Respondent State was in default. In relation to the second condition, the Court observed that there was no request by the Applicant for it to adopt the default judgment procedure. Nevertheless, the Court found that the present case was one where, of its own motion, it ought, in the interests of the due administration of justice, to have recourse to the default judgment procedure. In connection to the third condition, the Court recalled the various procedural steps taken by the Registry in this case, especially in so far as dealing with the Respondent State was concerned. The Court confirmed, from the record, that the Respondent State was aware of the proceedings as demonstrated by its various requests for extension of time that it filed but it still failed to file submissions on both merits and reparations. The Court, therefore, concluded that the Respondent State was duly notified of all the proceedings in relation to this Application. Overall, the Court concluded that the required conditions for it to rule by default had been fulfilled.

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. Having conducted a preliminary examination of its jurisdiction and noting that nothing on file indicated that it did not have jurisdiction, the Court concluded that it had material jurisdiction since the Applicants alleged a violation of their right to work under Article 15 of the Charter as well as in Article 23 of the UDHR. The Court also found that it had personal jurisdiction since the Application had been filed by a national of the Respondent State, which is also a party to the Protocol. Additionally, even though the Respondent State deposited an instrument withdrawing its Declaration under Article 34(6), the said withdrawal only took effect on 22 November 2020. This Application having been filed before the Respondent State's withdrawal was effective was, therefore, not affected by the said withdrawal. The Court also confirmed that it had temporal jurisdiction since the violations alleged by the Applicants were of a continuous character. The Court further held that it had territorial jurisdiction since the alleged violations are all said to have occurred within the territory of the Respondent State. In light of the foregoing analysis, the Court 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, had been met. The Court noted, from the record,

that the Applicants were well identified; that the Application was not incompatible with the Constitutive Act of the African Union and the Charter; that the language used in the Application was not offensive or insulting; that the Applicants submitted documents of various types as evidence; thereby, establishing that the Application was not based exclusively on news disseminated through the media; that the Applicants approached the highest court in the Respondent State, the Court of Appeal, which dismissed their application for extension of time to file an application for review on 7 August 2017, thereby exhausting domestic remedies; that the Applicants filed this Application on 25 September 2017 which was forty-nine (49) days after the last pronouncement by the Court of Appeal which meant the Application was filed within a reasonable time after the exhaustion of domestic remedies; and that the Application did not deal with matters or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union. Given the above analysis, the Court held that the Application met all the admissibility requirements in Article 56 of the Charter which are restated in Rule 50(2) of the Rules, and thus declared the Application admissible

On the merits of the Application, the Court noted that the Applicants alleged a violation of their right to work, especially the right to remuneration, and their right to non-discrimination.

In respect of the alleged violation of their right to remuneration, the Applicants alleged that their terminal benefits were not paid on time after their employment was terminated, and hence they were entitled to subsistence allowance for the time they spent waiting for their payments. The Court observed that the dispute in relation to the Applicants' entitlement to subsistence allowance had been litigated before the Respondent State's High Court, which found in favour of the Applicants, as well as before the Court of Appeal which reversed the High Court decision. The African Court held that the Applicants had failed to address the evidential gaps which had been identified by the Court of Appeal such that there was no basis for interfering with the findings of the Court of Appeal. The Court thus dismissed the Applicants' claim for a violation of their right to work by reason of the Respondent State's alleged failure to pay subsistence allowance.

With regard to the Applicants' claim for a violation of their right to non-discrimination, the Applicants alleged that the Respondent State paid other employees of UTM, whose employment was terminated on the same day as theirs, subsistence allowance at the rate of Tanzanian Shilling Nine Thousand and Two Hundred (TZS9 200) per day while the Applicants' allowance was computed at the rate of Tanzanian Shillings Six Thousand Four Hundred (TZS

6 400) per day. This, according to the Applicants, amounted to an unacceptable form of discrimination.

The Court confirmed that discrimination is a differentiation of persons or situations on the basis of one or several unlawful criterion/criteria. At the same time, however, the Court emphasised that not all forms of differentiation amount to unlawful discrimination. According to the Court a distinction or differentiation in treatment becomes discrimination, contrary to Article 2, when it does not have any objective or reasonable justification and in circumstances where it is not necessary and proportional. In the present case, the Court noted that the Applicants had not specified the ground(s), among those outlined in Article 2 of the Charter, on the basis of which they alleged to have been discriminated. Given that, with regard to discrimination, the burden lays with the person who alleges discrimination to establish the basis on which the discrimination can be inferred, the Court found that the Applicants had failed to discharge their burden of proving that they had been discriminated against. The Court thus dismissed the Applicants' claim for a violation of their right to non-discrimination.

Having dismissed all the Applicants' claims, the Court did not award any reparations.

As to costs, the Court ordered each party 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/0302017>.

For any other queries, please contact the Registry by email: [registrar@african-court.org](mailto: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: <https://www.african-court.org/wpafc/> .*