


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**APPLICATION NO. 031/2017**

**KABALABALA KADUMBAGULA AND DAUD MAGUNGA**

**V.**

**THE UNITED REPUBLIC OF TANZANIA**

**CASE SUMMARY**

## **A. PARTIES**

1. The Applicants are currently serving life imprisonment at the Uyui Central Prison, Tabora having been convicted of gang rape contrary to Section 131A(1) of the Penal Code [CAP 16 R.E. 2002] .
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol, through which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs (hereinafter referred to as “the Declaration”). On 21 November 2019, the Respondent State deposited, with the African Union Commission an instrument withdrawing the said Declaration.

## **B. SUBJECT OF THE APPLICATION**

### **A. Facts of the matter**

3. The Applicants seized the African Court on Human and Peoples’ rights (hereinafter referred to as the Court) on 27<sup>th</sup> November 2017 and their application was registered as Application No 031/2017.
4. The Applicants together with two others were charged with abduction and gang rape at the District Court of Kibondo. The Applicants were acquitted of the abduction and gang rape charge but subsequently found guilty of rape, the first Applicant was sentenced to forty (40) years as the principal while the second Applicant was sentenced to

thirty (30) years on 30<sup>th</sup> November 2000 as an abettor; the other two accused were acquitted of all charges.

5. The Applicants appealed the Trial Court's decision through Criminal Appeal No. 67 Of 68/2003 at the High Court in Tabora. In a decision of 18<sup>th</sup> March 2006, the High Court substituted the Applicants' conviction of rape with a conviction of gang rape and sentenced them to life imprisonment. The Applicants further appealed to the Court of Appeal in Criminal Appeal no. 129 of 2007 where the judgment of the High Court was upheld. The Applicants then filed an application for review of the Court of Appeal's decision through Criminal Application of 2010, which was dismissed on 4<sup>th</sup> August 2017.

#### **B. Alleged violations**

6. The Applicants aver that the Court of the Appeal erred in its judgment of 5<sup>th</sup> November 2009. They allege that the Court of Appeal especially erred in failing to evaluate "the whole evidence on record in deeply".
7. The Applicants also aver that the Court of Appeal erred in its judgment because it "relied on the evidence of close relatives and did not evaluate their evidence deeply".
8. The Applicants further aver that the Court of Appeal erred in its judgment as the prosecution did not prove their case beyond reasonable doubt because the Police Form 3 was never adduced to prove penetration actually occurred so as to establish the offence of rape.
9. The first Applicant posits that the Court of Appeal did not consider all the grounds of appeal for the Applicant but instead combined the grounds of appeal of the applicant with the second applicant's grounds thereby depriving the first applicant of the right to be heard in violation

of Article 3 (2) of the African Charter on Human and Peoples' Rights (Herein after referred to as African Charter).

10. The Applicants allege that they had no legal representative thus their right to be heard was breached 'leading to prejudice'. This also violated their fundamental right guaranteed under Article 7(1)(c) of the African Charter and Article 10(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (Hereinafter referred to as the Protocol).

### **C. APPLICANTS' PRAYERS**

11. The Applicants pray the Court to:

- (a) Grant them reparations pursuant to Article 27 (1) of the Protocol.
- (b) 'Restore(s) justice where it was overlooked, quash both the conviction and sentence imposed on' them, and set them free from 'prison wall'.
- (c) Issue 'any other order(s) or legal remedy that the Court think fit in the circumstance of the complaint'.