



Arusha, Tanzania
Website: www.african-court.org
Telephone+255-732-979-509
JUDGMENT SUMMARY

DADU SUMANO KILAGELA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 017/2018

JUDGMENT ON MERITS AND REPARATIONS

3 SEPTEMBER 2024

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

Arusha, 3 September 2024. The African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the matter of *Dadu Sumano Kilagela v. United Republic of Tanzania*.

Dadu Sumano Kilagela (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was incarcerated at Uyui Central Prison, Tabora, Tanzania, having been convicted of armed robbery and sentenced to thirty (30) years imprisonment. The Applicant alleged a violation of his rights during the proceedings before national courts.

The Applicant alleged that the Respondent State violated his rights under Articles 2, 3(2), 7(1)(a) and 7(1)(c) of the African Charter on Human and Peoples' Rights (the African Charter or the Charter) as a result of the criminal proceedings before domestic courts.

The Court observed, in accordance with Article 3 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), that it had to, preliminarily, determine whether it

had jurisdiction to hear the Application. It then noted that the Respondent State had raised an objection to its material jurisdiction on the grounds that the Application was requesting the Court to sit as an appellate court to consider issues of fact and law and adjudicate matters of evidence which had already been decided by its Court of Appeal.

In resolving this objection, the Court recalled that it has consistently held that where allegations of human rights violations relate to the manner in which domestic courts assessed the evidence before them, inclusive of the final sentence imposed, it reserves the power to determine whether the domestic proceedings were conducted in a manner that is consistent with international human rights instruments to which the Respondent State is a party.

The Court further reiterated that, while national courts are empowered to consider evidentiary issues, its role is to ensure that domestic proceedings comply with international human rights standards set out in the Charter and any other human rights instruments ratified by the Respondent State. The Court, therefore, dismissed the Respondent State's objection and held that it had material jurisdiction to hear the Application.

Although other aspects of its jurisdiction were not contested by the Respondent State, the Court nevertheless examined all aspects of its jurisdiction, as mandated by Rule 49(1) of its Rules, and held that it had personal, temporal and territorial jurisdiction to determine the Application. The Court then concluded that it had jurisdiction to hear the Application.

In terms of the admissibility of the Application, the Court, as empowered by Article 6(2) of the Protocol, had to determine whether the requirements of admissibility, provided under Article 56 of the Charter and Rule 50(2) of the Rules of Court ("the Rules"), had been met. In this regard, the Court first considered the objection raised by the Respondent State relating to the Applicant's failure to exhaust local remedies. The Court established that the Applicant, having been convicted by the District Court sitting at Kasulu, appealed to the High Court sitting at Tabora which dismissed his appeal on 19 April 2013. The Applicant then filed another appeal before the Court of Appeal sitting at Bukoba, which also dismissed his appeal on 20 June 2014. His application

for review of the Court of Appeal's decision was also dismissed on 25 August 2017. Given that the Court of Appeal is the Respondent State's highest judicial organ, the Court concluded that the Applicant exhausted domestic remedies.

The Court further held that contrary to the Respondent State's arguments, the Applicant need not have filed a constitutional petition since this avenue, as framed in the Respondent States' legal system, is an extra ordinary remedy that an applicant need not exhaust. The Court, therefore, dismissed the Respondent State's objection on the non-exhaustion of local remedies.

Although the other admissibility requirements in Article 56 of the Charter were not contested by either of the Parties, the Court nevertheless analysed each of the requirements and confirmed that they were satisfied before concluding that the Application was admissible.

On the merits of the Application, the Court noted that the Applicant alleged that the Respondent State had violated his right to non-discrimination, to equal protection before the law, to a fair trial.

With regard to the allegation that the Respondent State violated the Applicant's right to non-discrimination, the Court recalled that the burden of proof for a human rights violation lies with he/she that alleges. In the instant Application, the Court observed that the Applicant neither made specific submissions nor provided evidence that he was discriminated against. The Court thus held that there was no basis for finding a violation of the Applicant's rights and, therefore, dismissed the Applicant's allegation of a violation of Article 2 of the Charter.

Regarding the alleged violation of the right to equal protection of the law, the Court found that there was no evidence, on the record, to prove that the Applicant was denied the right to argue his appeal before the Court of Appeal. The Applicant's allegations were, therefore, dismissed.

The Court then considered the alleged violation of the Applicant's right to a fair trial. In this connection it examined two key allegations: first, that the findings of the domestic

courts were not supported by evidence and that his conviction was secured by disregarding evidence in his favour; second that the Respondent State failed to provide him with legal representation during domestic proceedings.

As for the first allegation, the Court dismissed this having established that the District Court sitting at Kasulu thoroughly considered evidence against the Applicant, including the credibility of witnesses who testified against him. The Court also found no significant errors or injustice in the domestic courts' evaluation of the evidence as claimed by the Applicant. The Court also took special notice of how the Respondent State's Court of Appeal re-evaluated the evidence in confirming the Applicant's conviction. The Court thus held that the alleged violation of the Applicant's right to a fair trial by reason of him being convicted without supporting evidence was unfounded.

With regard to the alleged right to legal representation, from the record, the Court observed that the Applicant represented himself in all domestic proceedings. However, he was facing a serious charge of armed robbery, which carries a minimum penalty of thirty (30) years' incarceration. Relying on its jurisprudence, the Court established that, regardless of whether an accused person requests it or not, free legal assistance should be offered to all accused persons when they are facing serious charges carrying lengthy prison terms.

Given the gravity of the offence that the Applicant was facing, the Court found that the interests of justice required that he be provided with legal assistance throughout his trial and appeals. The Court, therefore, held that the Respondent State violated the Applicant's right to free legal assistance due to its failure to provide him with legal representation during the domestic proceedings.

Regarding reparations, the Applicant prayed the Court to grant him reparations for the violations he suffered, to grant the application and restore justice by making appropriate order as per Article 27 of the Protocol.

As regards pecuniary reparations, the Court declined to grant reparations for material prejudice due to the Applicant's failure to submit supporting evidence. Nevertheless, the Court noted that the violation of the Applicant's right to a fair trial, which it had

established, caused the Applicant moral prejudice. Therefore, in the exercise of its discretion, the Court awarded the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300 000) as reparation for the moral prejudice that he sustained.

In respect of non-pecuniary reparations, the Court held that the Applicant had failed to establish a case for him to be awarded any non-pecuniary reparations. The Court, therefore, did not make any award for non-pecuniary reparations.

The Court further ordered the Respondent State to pay the TZS 300,000 free from taxes, effective six (6) months from the date of notification of the Judgment, failing which it would pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount was fully paid.

The Court further ordered the Respondent State to submit to the Court, within six (6) months from the date of notification of the Judgment, a report on the measures taken to implement the orders set forth in the Judgement and thereafter, every six (6) months until there is full implementation thereof.

On 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/0172018>

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