

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

APPLICATION NO. 024/2018

GERALD KOROSO KALONGEAPPLICANT

V.

UNITED REPUBLIC OF TANZANIA.....RESPONDENT

CASE SUMMARY

I. THE PARTIES

1. Mr. Gerald Koroso Kalonge (hereinafter “the Applicant”) is a national of Tanzania. He is currently awaiting the execution of his sentence of death in Ruanda Central Prison after being tried and convicted for murder. The Applicant alleges the violation of, among others, the rights enshrined in Articles 3(1), 3(2), 5, 7(1)(c), 12(2), 12(3), and 27(1) of the African Charter on Human and Peoples’ Rights (hereinafter “the Charter”).
2. The Respondent State became a Party to the Charter on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter “the Protocol”) on 10 February 2006. It deposited the Declaration prescribed under Article 34(6) of the Protocol on 29 March 2010. On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument of withdrawal of the said Declaration. The Court has held that this withdrawal had no bearing on pending cases and new cases filed before the withdrawal came into effect, which was one year after the deposit, that is, on 22 November 2020.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. From the record, the Applicant, along with four (4) other accused persons, were charged with the offence of murder. The Applicant was convicted on 30 June 2015, by the High Court of Tanzania Sitting at Mbeya, and sentenced to death by hanging. Dissatisfied with this result, the Applicant

¹ *Andrew Ambrose Cheusi v. United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 35-39.

appealed to the Court of Appeal which dismissed his appeal, in its entirety, on 12 October 2017.

B. Alleged Violations

4. The Applicant alleges that his rights under the Charter and the Constitution of the Republic of Tanzania have been violated:

5. Under the Charter, he alleges that:
 - i. His right to equal protection of the law, protected under Article 3(2), has been violated as his conviction has prevented him from exercising his rights under the Charter, specifically the right to leave and to return to the country, protected under Article 12(2) of the Charter.
 - ii. His right to dignity and to be protected from cruel treatment and punishment, protected under Article 5, has been violated as a result of having been sentenced to death by hanging.
 - iii. His right to dignity and to not be subject to degrading treatment, protected under Article 5, has been violated as a result of the decision to dismiss the Applicant's appeal, but to acquit the other accused's in the matter.
 - iv. His right to be defended by counsel of his choice, protected under Article 7(1)(c), has been violated as he was not represented by counsel of his choice during the appeal proceedings.
 - v. His right to dignity and to not be subject to cruel, inhuman or degrading treatment or punishment, protected under Article 5, has been violated as a result of having been detained for more than eleven (11) years, on the basis of insufficient evidence.
 - vi. His right to be treated equally before the law, protected under Article 3(1), has been violated as a result of having been convicted on the

basis of bone tissue that, according to the Applicant, had not been examined by a medical practitioner and had not, therefore, been verified as belonging to the deceased.

- vii. His right to leave and to return to his country, protected under Article 12(2), has been violated because of his conviction.
- viii. He was unable to fulfil his duties towards his family, as provided for under Article 27(1), as a result of his incarceration.
- ix. His right to work, protected under Article 15, was violated as he was unable to work while incarcerated.
- x. His right to freedom of movement, and his right to seek asylum in other countries, protected under Articles 12(1) and 12(3) respectively, were violated as a result of the Applicant having been incarcerated for the murder of a victim whose body has never been found.

6. Under the Constitution of the Republic of Tanzania, he alleges that:

- i. His rights under Articles 13(1) and 17(1) have been violated, as a result of having been convicted on the basis of bone tissue that, according to the Applicant, had not been examined by a medical practitioner and had not, therefore, been verified as belonging to the deceased.
- ii. His rights under Article 13(1) have been violated because of having been detained for more than eleven (11) years, on the basis of evidence that constituted bone tissue and unknown fingers.
- iii. His rights under Article 13(3) have been violated as a result of the Applicant having been separated from his family and on the basis that his ability to work was affected, as a result of his incarceration.

C. APPLICANT'S PRAYERS

7. The Applicant prays the Court for the following:

- i. The registration of the Application.
- ii. Quashing of the conviction for murder and setting aside of the death sentence.
- iii. An order for compensation, to be assessed by the Court.