


<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>		

**THE MATTER OF**

**DADU SUMANO KILAGELA**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION No. 017/2018**

**JUDGMENT**

**3 SEPTEMBER 2024**



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**The Court composed of:** Modibo SACKO, Vice President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules")<sup>1</sup> Justice Imani D. ABOUD, President of the Court, a national of Tanzania, did not hear the Application.

In the matter of

Dadu Sumano KILAGELA

*Self-represented*

Versus

UNITED REPUBLIC OF TANZANIA

*Represented by:*

- i. Dr. Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
- ii. Dr Ally POSSI, Deputy Solicitor General, Office of the Solicitor General;
- iii. Ms Caroline Kitana CHIPETA, Acting Director, Legal Unit, Ministry of Foreign Affairs and East African Cooperation;
- iv. Ms Alesia A. MBUYA, Acting Assistant Director, Constitutional Human Rights and Elections Petitions, Principal State Attorney;
- v. Ms Pauline Fridoline MDENDEMI, State Attorney, Office of the Solicitor General; and

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<sup>1</sup> Rule 8(2), Rules of Court, 2 June 2010.

- vi. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation.

After deliberation,

*Renders this Judgment:*

## **I. THE PARTIES**

1. Dadu Sumano Kilagela (hereinafter referred to as “the Applicant”) is a national of Tanzania. At the time of filing the Application, he was incarcerated at Uyui Central Prison, Tabora, Tanzania, having been sentenced to thirty (30) years’ imprisonment for armed robbery. The Applicant alleges a violation of his rights during the proceedings before national courts.
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 (hereinafter referred to as “the Declaration”), through which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status with the African Commission on Human and Peoples’ Rights. On 21 November 2019, the Respondent State deposited an instrument withdrawing its Declaration with the Chairperson of the African Union Commission. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect one (1) year after its deposit, in this case, on 22 November 2020.<sup>2</sup>

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<sup>2</sup> *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

## **II. SUBJECT OF THE APPLICATION**

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

3. It emerges from the record that on 31 March 2007, in Shonguliba Village, Kasuli District in Kigoma Region, the Applicant, in the company of four (4) other individuals who are not party to these proceedings, stole money, a cellular phone, maize, and a bicycle from the family home of Stephano Selekwa. In the course of the theft, Stephano Selekwa and his wife were beaten and seriously injured. According to the record, the Applicant, who was armed with a gun, fired shots in the air to ward off neighbours seeking to assist the victims.
4. The Applicant was arrested on 13 December 2007 and charged with the offence of armed robbery as set out in sections 285 and 286 of the Respondent State's Penal Code. He was subsequently tried, and convicted, on 18 February 2009, by the District Court of Kasulu and sentenced to thirty (30) years imprisonment and a fine of Tanzanian Shillings Two Hundred and Fifty Thousand (TZS 250 000).
5. The Applicant appealed against his conviction and sentence before the High Court of Tanzania sitting at Tabora. On 6 May 2013, his appeal was dismissed for lack of merit.
6. The Applicant further appealed to the Court of Appeal of Tanzania sitting at Tabora which, on 20 June 2014, dismissed his appeal thereby upholding the conviction and sentence.
7. The Applicant then applied to the Court of Appeal for review of the said decision, which was dismissed for lack of merit on 25 August 2017.

### **B. Alleged violations**

8. The Applicant alleges the following:

- i. The judgment of the Court of Appeal violated his right protected by Article 2 of the Charter as it “proceeded in violation of the principles of law and practice governing the Tanzanian criminal justice system”;
- ii. The Court of Appeal violated his right protected by Article 3(2) of the Charter by ignoring his additional grounds of appeal;
- iii. His right to a fair trial was violated since he was not represented by an advocate during all domestic proceedings; and
- iv. The judgments of the domestic courts were all against the weight of the evidence.

### **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

9. The Application was filed on 20 June 2018.
10. On 2 August 2018, the Registry acknowledged receipt of the Application and requested the Applicant to file copies of the judgments in the domestic criminal proceedings against him.
11. The Respondent State filed its Response on 19 December 2018, and this was transmitted to the Applicant on 21 December 2018. Notwithstanding several reminders, the Respondent State did not file submissions on reparations.
12. Pleadings were closed on 1 February 2024 and the Parties were duly informed.

### **IV. PRAYERS OF THE PARTIES**

13. On the merits, the Applicant prays that the Court:
  - i. Grant “the applicant’s application and restore justice by making appropriate orders as per Articles 27(1) and (2) of the Protocol to the charter”;

- ii. Grant him “any other order(s) that it may deem fit and just to grant in the circumstances of this application”.
- 14. In respect of reparations, the Applicant prays the Court to order the Respondent State to pay him the sum of Tanzanian Shillings One Million and Twenty-Two Thousand (TZS 1 022 000) for each of the eleven (11) years he has been imprisoned, as compensation for the loss of his earnings.
- 15. In relation to admissibility and jurisdiction, the Respondent State prays the Court to:
  - i. Hold that the African Court on Human and Peoples’ Rights is not vested with jurisdiction to adjudicate the Application;
  - ii. Hold that the Application does not meet the admissibility requirements provided by Rule 40(5) of the Rules of Court;
  - iii. Hold that the Application is inadmissible;
  - iv. Dismiss the Application.
- 16. In relation to the merits of the Application, the Respondent State prays the Court to:
  - i. Hold that it did not violate the Applicant’s right provided under Article 2 of the African Charter on Human and Peoples’ Rights;
  - ii. Hold that it did not violate the Applicant’s right under Article 3(2) of the Charter;
  - iii. Hold that the Applicant not be awarded reparations;
  - iv. Hold the cost of this Application be borne by the Applicant.

## **V. JURISDICTION**

17. Article 3 of the Protocol provides as follows:

- 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the

Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
18. In accordance with Rule 49(1) of the Rules, “[t]he Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules”.
19. On the basis of the above-cited provisions, the Court must preliminarily establish its jurisdiction and dispose of objections thereto, if any.
20. In the present Application, the Court observes that the Respondent State raises an objection to its material jurisdiction. The Court will thus first consider the said objection before examining other aspects of its jurisdiction, if necessary.

#### **A. Objection to material jurisdiction**

21. The Respondent State raises an to the Court’s material jurisdiction contending that the Applicant is asking it to sit as an appellate court and adjudicate matters of evidence which have already been decided by its Court of Appeal. In support of this argument, the Respondent State cites the Court’s judgment in *Ernest Francis Mtingwi v. Republic of Malawi*. Further, the Respondent State argues that the Court lacks jurisdiction to order the Applicant’s release under Article 27(1) of the Protocol since the Applicant’s prayers are not within the remit of the Court’s mandate.
22. The Applicant did not submit on this point.

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23. The Court recalls, as it has consistently held, that in accordance with Article 3(1) of the Protocol, it has jurisdiction to consider any Application filed before



it provided that the Applicant alleges the violation of rights guaranteed in the Charter, the Protocol or any other human rights instruments ratified by the Respondent State.<sup>3</sup>

24. The Court further reiterates that, while national courts are empowered to consider evidentiary issues, as recalled by the Respondent State, this Court's role is to ensure that domestic proceedings are in compliance with international human rights standards set out in the Charter and any other human rights instruments ratified by the Respondent State.<sup>4</sup> Consequently, if the procedure leading to the conviction and sentencing of any applicant is found to be in violation of the international standards provided for in the Charter, then, the Court is empowered to order the release of an applicant as reparation under Article 27(1) of the Protocol.
25. In the instant case, the Court notes that the Applicant alleges violation of the right to equality and non-discrimination and also the right to a fair trial which are all protected under the Charter, to which the Respondent State is a party. The Court therefore holds that its material jurisdiction is established.
26. Based on the foregoing, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction in this Application.

## **B. Other aspects of jurisdiction**

27. The Court notes that the Respondent State does not contest its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding with the determination of the Application.

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<sup>3</sup> *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Jibu Amir alias Mussa and Saidi Ally Mang'aya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 18.

<sup>4</sup> *Kennedy Ivan v. United Republic of Tanzania* (merits) (March 2019) 3 AfCLR 48, § 26; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.

28. In relation to its personal jurisdiction, the Court recalls, as indicated in paragraph 2 of this Judgment, that the Respondent State is a party to the Protocol and has deposited the Declaration. The Court further recalls that on 21 November 2019, the Respondent State deposited an instrument withdrawing its Declaration. As per the Court's jurisprudence, the withdrawal of the Declaration does not apply retroactively and only takes effect twelve (12) months after the instrument of such withdrawal has been deposited, in this case, on 22 November 2020.<sup>5</sup> This Application, having been filed before the said date, specifically on 24 January 2018, that is, before the withdrawal took effect, is thus unaffected. Consequently, the Court holds that it has personal jurisdiction.
29. Regarding its temporal jurisdiction, the Court observes that the violations alleged in present Application emanate from the Applicant's trial which was concluded with the Respondent State's Court of Appeal's judgment delivered on 20 June 2015. The Court of Appeal's decision, the Court observes, was delivered after the Respondent State had ratified the Protocol.<sup>6</sup> The Court thus holds that it has temporal jurisdiction in this Application.
30. As regards its territorial jurisdiction, the Court notes that all the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that its territorial jurisdiction is established.
31. In light of all the above, the Court holds that it has jurisdiction to determine the present Application.

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<sup>5</sup> *Cheusi v. Tanzania, supra*, §§ 35-39.

<sup>6</sup> *Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 041/2016, Judgment of 5 September 2023 (merits and reparations), § 58.

## VI. ADMISSIBILITY

32. Article 6(2) of the Protocol provides that, “the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.” Pursuant to Rule 50(1) of the Rules,<sup>7</sup> “[t]he Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules.”
33. Rule 50(2) of the Rules,<sup>8</sup> which in substance restates the provisions of Article 56 of the Charter, provides as follows:

Applications filed before the Court shall comply with all the following conditions:

- a. disclose the identity of the Applicant notwithstanding the latter’s request for anonymity;
- b. comply with the Constitutive Act of the African Union and the Charter;
- c. not contain any disparaging or insulting language;
- d. not be based exclusively on news disseminated through the mass media;
- e. be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
- g. Not raise any matter 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.”

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<sup>7</sup> Rule 39(1), Rules of Court, 2 June 2010.

<sup>8</sup> Rule 40, Rules of Court, 2 June 2010.

34. The Court observes that the Respondent State objects to the admissibility of the Application based on the alleged non-exhaustion of local remedies by the Applicant. The Court will, therefore, consider the said objection first before examining other admissibility requirements, if necessary.

**A. Objection based on failure to exhaust local remedies**

35. The Respondent State contends that the Applicant does not meet the admissibility requirements provided under Rule 50(2)(e) of the Rules, as he did not exhaust all local remedies before filling this Application. It reiterates that the exhaustion of local remedies is a fundamental principle of international law as confirmed by the Court's judgments in *Urban Mkandawire v. Republic of Malawi* and *Peter Joseph Chacha v. United Republic of Tanzania*.
36. In this regard, the Respondent State submits that the "Applicant never made an attempt to exhaust the available remedies and give the Respondent the opportunity to address his alleged grievances." The Respondent State also points out that that "the Applicant had another remedy available to him whereby he could contest and challenge the alleged fundamental rights violations he has brought before this Honourable Court." It contends that the Applicant could have instituted a constitutional petition before its High Court, under the Basic Rights and Duties Enforcement Act. It is the Respondent State's submission, therefore, that the failure to institute the constitutional petition means that the Applicant does not meet the admissibility requirements under the Charter and the Rules.

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37. The Court observes that under Article 56(5) of the Charter, the provisions of which are restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies unless the same are unavailable, ineffective and insufficient or unless the domestic

proceedings to pursue them are unduly prolonged.<sup>9</sup> The rule of exhaustion of local remedies, as the Court has consistently pointed out, 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.<sup>10</sup>

38. In the instant case, the Court observes that having been convicted by the District Court sitting at Kasulu, the Applicant appealed to the High Court sitting at Tabora, which dismissed his appeal on 19 April 2013. He 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 concludes that the Applicant exhausted domestic remedies.
39. As for the Respondent State's argument relating to the Applicant's failure to file a constitutional petition, the Court recalls that it has consistently held that this remedy, as framed in the Respondent State's legal system, is an extraordinary remedy that no applicant is required to exhaust.<sup>11</sup>
40. In the circumstances, the Court dismisses the Respondent State's objection and holds that the Applicant exhausted domestic remedies.

## **B. Other admissibility requirements**

41. The Court notes that there is no contention regarding the Application's compliance with the requirements set out in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules. Nonetheless, it must satisfy itself that these requirements

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<sup>9</sup> *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.

<sup>10</sup> *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

<sup>11</sup> *Reuben Juma and Gawani Nkende v. United Republic of Tanzania*, ACtHPR, Consolidated Applications Nos. 015/2017 and 011/2018, Judgment of 5 September 2023 (merits and reparations), § 45.

are met.

42. From the record, the Court notes that the Applicant has been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules.
43. The Court also notes that the Applicant's claims seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. The Court holds, therefore, that the requirement of Rule 50(2)(b) of the Rules is met.
44. The Court observes that the language used in the Application is not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules.
45. Further, the Court also observes that the Application is not based exclusively on news disseminated through mass media as it is founded on legal documents in fulfilment of the requirements in Rule 50(2)(d) of the Rules.
46. In relation to the requirement for filing Applications within a reasonable time, under Rule 50(2)(f), the Court recalls that neither the Charter nor the Rules specify the time frame within which Applications must be filed, after exhaustion of local remedies. As per the Court's jurisprudence "[...] the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."<sup>12</sup>
47. Specifically, the Court notes that the decision of the Court of Appeal dismissing the Applicant's appeal, was rendered on 20 June 2014 while this

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<sup>12</sup> *Zongo and Others v. Burkina Faso* (merits), *supra*, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.

Application was filed on 20 June 2018 – a period of four (4) year thus elapsed. However, the Court also notes that the Applicant filed an application for review of the Court of Appeal’s decision, which was dismissed on 25 August 2017. The period between the dismissal of the Applicant’s application for review and filing before this Court, therefore, is nine (9) months and twenty-six (26) days.

48. In its jurisprudence, the Court has held that applicants who file review proceedings against apex court decisions must do so within the applicable statutory frameworks and should not be penalised for utilising an avenue available within the legal system.<sup>13</sup> In the present case, the Court notes, from the record, that the Applicant’s application for review bears a serial number from 2014 which indicates that it was filed within the same year after the Court of Appeal had dismissed his appeal.
49. The Court also notes that the Applicant represented himself at all stages of proceedings before domestic courts and is doing same in the present proceedings.<sup>14</sup> The Court finds, therefore, that the reasonableness of time for filing, in this case, must be computed from the date on which the Court of Appeal dismissed the Applicant’s application for review. It thus holds that the period of nine (9) months and twenty-six (26) days that it took the Applicant to file this Application is reasonable within the meaning of Rule 50(2)(f).<sup>15</sup>
50. The Court also finds that the Application does not concern a case which has already been 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 in fulfilment of Rule 50(2)(g) of the Rules.

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<sup>13</sup> *Leonard Moses v. United Republic of Tanzania*, ACTHPR, Application No. 033/2017, Ruling of 5 September 2023, § 55.

<sup>14</sup> *Thomas v. Tanzania* (merits), *supra*, § 73; *Jonas v. Tanzania* (merits), *supra*, § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.

<sup>15</sup> *Sébastien Germain Ajavon v. Republic of Benin*, ACTHPR, Application No. 065/2019, Judgment of 29 March 2021 (merits and reparations), §§ 86-87.

51. As a consequence of the foregoing, the Court declares the Application admissible.

## **VII. MERITS**

52. The Applicant alleges that the judgment of the Respondent State's Court of Appeal violated his right protected by Article 2 of the Charter; his right to equal protection before the law under Article 3(2) of the Charter; and his right to a fair trial. The Court will proceed to address each of the Applicants' allegations.

### **A. Alleged violation of the right to non-discrimination**

53. The Applicant alleges that "the facts of the matter conducted by the Court of Appeal are violating the fundamentals against human and peoples' rights under Article 2 of the Charter."

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54. The Respondent State did not submit on this point.

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55. Article 2 of the Charter provides as follows:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status

56. The Court recalls that the burden of proof for a human rights violation lies with he/she that alleges. In the instant matter, the Court observes that the Applicant neither makes specific submissions nor provides any evidence



that he was discriminated against in violation of Article 2 of the Charter.<sup>16</sup>

57. In these circumstances, the Court finds that there is no basis for finding a violation and, therefore, holds that the Respondent State did not violate the Applicant's right to non-discrimination protected under Article 2 of the Charter.

**B. Alleged violation of the right to equal protection of the law**

58. The Applicant submits that his right under Article 3(2) of the Charter was violated insofar as the Court of Appeal refused to consider his additional grounds of appeal "on the sole ground that they did not feature in the memorandum of appeal filed with the court."

59. The Respondent State disputes the Applicant's submission and puts the Applicant to strict proof. It submits that during the proceedings before its Court of Appeal, the Applicant raised additional grounds of appeal without complying with the Court of Appeal Rules. Specifically, the Respondent State points out that under Rule 81(1) of its Court of Appeal Rules of 2009, any appellant who wishes to argue a ground of appeal which was not contained in his/her memorandum of appeal must first apply for leave of the court. The Respondent State therefore submits that in the absence of such a request, the Applicant cannot establish violation of his rights under Article 3(2) of the Charter.

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60. Article 3(2) of the Charter provides that "every individual shall be entitled to equal protection of the law."

61. As earlier pointed out, the burden of proving an alleged violation of a right lies with the party that makes the allegation. In the present case, therefore,

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<sup>16</sup> *Sijaona Chacha Macheru v. United Republic of Tanzania*, ACtHPR, Application No. 035/2017 Judgment of 22 September 2022 (merits), § 82; *Yassin Rashid Maige v. United Republic of Tanzania*, ACtHPR, Application No. 018/2017 Judgment of 5 September 2023 (merits and reparations) § 124.

it is for the Applicant to prove that the conduct of the Respondent State, through its Court of Appeal, violated his right to equal protection under the law, protected by Article 3(2) of the Charter. Specifically, the Court recalls that the Applicant's grievance is that the Court of Appeal's failure to consider his additional grounds of appeal violated his rights.

62. The Court observes that, generally, the procedure before the Respondent State's Court of Appeal is provided for in the Court of Appeal Rules. The Rules require any litigant to seek prior leave of the Court to argue any ground of appeal not specified in his/her memorandum of appeal. Nothing in the record before this Court shows that the Applicant did request for leave to argue his additional grounds of appeal. In the circumstances, a bare assertion that the Applicant's rights were violated by the Court of Appeal's refusal to allow him to argue additional grounds of appeal, without first seeking leave, is unfounded.
63. The Court thus holds that the Applicant fails to prove a violation of his rights under Article 3(2) of the Charter. His allegations are, therefore, dismissed.

### **C. Alleged violation of the right to fair trial**

64. The Applicant alleges a violation of his right to a fair trial insofar as, first, the decisions of domestic courts were based on credible evidence since his conviction was secured by disregarding evidence in his favour; and secondly, insofar as he was not afforded legal representation during domestic proceedings. The Court will address each of the alleged violations sequentially under the various aspects of the violation of the right to have his case heard and the right to legal assistance.

#### **i. Alleged violation of the right to be heard**

65. The Applicant alleges that all the three domestic courts that considered his case "rendered deaf ears to the plea of the Applicant's innocence despite overwhelming evidence that despite his arrest had nothing to do with the

offence he was convicted of ...”. He surmises that his conviction was therefore due to failure by the domestic courts to adequately consider exculpatory evidence.

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66. The Respondent State disputes the allegations and puts the Applicant to strict proof. Specifically, the Respondent State submits that the Applicant was convicted on the basis of identification evidence which the trial court found to be satisfactory. It also points out that the evidence was considered by both the High Court and the Court of Appeal, both of which found that the trial court was judicious in its reasoning. The Respondent State therefore submits that the Applicant’s allegation lacks merit and should be dismissed.

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67. Article 7(1) of the Charter provides that “[e]very individual shall have the right to have his cause heard ...”.
68. The Court recalls that in the case of *Kijiji Isiaga v. United Republic of Tanzania*, it held that:

... domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence, and as an international court, this court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.<sup>17</sup>

69. The above notwithstanding, the Court can nevertheless evaluate whether the manner in which domestic proceedings were conducted, including the conduct of proceedings as well as the assessment of the evidence, was done in consonance with international human rights standards.<sup>18</sup>

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<sup>17</sup> *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.

<sup>18</sup> *Ibid*, § 66.

70. From the record, this Court notes that the District Court exhaustively considered the evidence presented against the Applicant, including the credibility of witnesses particularly the victim of the robbery and his wife, upon whose testimony the Applicant's conviction hinged. The District Court found the witnesses to be trustworthy, credible and honest. The District Court noted in particular that the accused was not an unknown person to the victim and his wife, and that the moonlight and burning hurricane lamp had facilitated his identification. The District Court concluded that it was satisfied "beyond any peradventure that the accused was the robber on the material night" and that the prosecution had proved their case beyond reasonable doubt.
71. On appeal, the High Court similarly found that in relation to evidence on identification, the testimonies on which the conviction was based were credible. It also found that the Applicant was properly identified and the case was proved to the required standard noting that "the witnesses could not have mistakenly identified the appellant as he as well known to them and as he did not dispute that fact". The Court of Appeal also reconsidered the identification evidence and concluded that the Applicant had not provided it with material that would warrant setting aside the decision of the High Court.
72. The Court observes that the national courts assessed the circumstances in which the crime was committed and considered the arguments of both the Respondent State and the Applicant, to eliminate possible errors as to the identity of the perpetrator of the robbery. As it emerges from the record, the domestic courts were particularly mindful of the dangers of convicting on the basis of inaccurate identification evidence.
73. The Court finds, therefore, that the manner in which the domestic courts evaluated the evidence leading to the Applicant's conviction does not disclose any manifest error(s) and was not tainted with injustice to the detriment of the Applicant. Accordingly, the Court holds that there are no grounds for interfering with the reasonings of the domestic courts.

74. In light of the foregoing, the Court dismisses the Applicant's allegations and holds that the Respondent State did not violate Article 7(1) of the Charter.

**ii. Alleged violation of the right to legal representation**

75. The Applicant alleges that since he did not have legal representation, the Court of Appeal duty-bound to ensure that his rights were safeguarded during the hearing of his appeal. He further alleges that his right to a fair trial was violated due to the fact that he did not have counsel to assist him.

76. The Respondent State did not submit on this point.

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77. According to Article 7(1)(c) of the Charter, the right to have one's cause heard includes "the right to defence, including the right to be defended by counsel of [one's] choice."

78. The Court has previously interpreted Article 7(1)(c) of the Charter in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR),<sup>19</sup> and determined that the right to defence includes the right to be provided with free legal assistance.<sup>20</sup>

79. In the instant case, the Court observes from the record that the Applicant had personal conduct of his case at all stages of the domestic proceedings despite facing a serious charge of armed robbery carrying a minimum thirty (30) years' prison sentence. This notwithstanding, the Applicant conducted his case before all domestic courts.

80. The Court has consistently held that any indigent person charged with serious offences which carry heavy sentences, must be afforded free legal

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<sup>19</sup> The Respondent State became a State Party to the ICCPR on 11 June 1976.

<sup>20</sup> *Thomas v. Tanzania* (merits), *supra*, § 114; *Isiaga v. Tanzania* (merits), *supra*, § 72; *Onyachi and Njoka v. Tanzania* (merits), *supra*, § 104.

assistance as of right.<sup>21</sup>

81. The Court has also held that the duty to afford indigent persons facing serious charges assorted with a heavy penalty holds for both the trial and appellate stages.<sup>22</sup> States should, therefore, automatically grant legal assistance as long as the interests of justice so require.
82. In the instant case, the Court finds that given the gravity of the offence that the Applicant was facing, the interests of justice required that he be afforded legal assistance at all stages of the domestic proceedings.
83. The Court, therefore, holds 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 free legal assistance.

## VIII. REPARATIONS

84. In his Application, the Applicant prays the Court “to grant the Applicant’s application and restore justice by making appropriate order as per Articles 27(1) and 2 of the protocol to the Charter.”

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85. The Respondent State, for its part, prayed that “the Applicant not be awarded reparations”.

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86. The Court recalls Article 27(1) of the Protocol which provides that:

If the Court finds that there has been violation of a human or peoples’

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<sup>21</sup>*Thomas v. Tanzania* (merits), *ibid*, § 123; *Isiaga v. Tanzania*, *ibid*, § 78; *Onyachi and Njoka v. Tanzania*, *ibid*, §§ 104 and 106.

<sup>22</sup> *Thomas v. Tanzania* (merits), § 124; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507, § 183.

rights, it shall make appropriate orders to remedy the violation including the payment of the fair compensation or reparation.

87. The Court considers that for reparations to be granted, the Respondent State should, first, be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where granted, reparation should cover the full damage suffered. It is also clear that it is always the Applicant that bears the onus of justifying the claims made.<sup>23</sup> The Court has also held that the purpose of reparations is to restore the victim to the situation he/she would have been in but for the violation.<sup>24</sup>

#### **A. Pecuniary reparations**

88. The Applicant prays the Court to order the Respondent State to pay him compensation in the sum of Tanzanian Shillings One Million and Twenty Thousand (TZS1 020 000) for each of the eleven (11) years that he has been incarcerated. According to the Applicant, the aforementioned sum represents his loss of income from the sale of crops that has come about due to his imprisonment.

\*

89. The Respondent State prays the Court to dismiss the Applicant's prayers for reparations.

#### **i. Material prejudice**

90. The Court recalls that for it to grant reparations for material prejudice, there must be a causal link between the violation established by the Court and the prejudice caused and there should be a specification of the nature of the

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<sup>23</sup> See, *Guehi v. Tanzania* (merits and reparations), *supra*, § 157. See also, *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, §§ 20-31; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, §§ 52-59 and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, §§ 27-29.

<sup>24</sup> *Lucien Ikili Rashidi v. United Republic of Tanzania* (28 March 2019) 3 AfCLR 13, § 118 and *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 60.

prejudice and proof thereof.<sup>25</sup> The Court has also held that an Applicant bears the burden of providing evidence in support of his allegations.<sup>26</sup>

91. In relation to material prejudice, the Court further recalls that it is the duty of an applicant to provide evidence to support his/her claims for all alleged material loss.
92. In the present case, the Court observes that the Applicant merely makes claims and therefore does not substantiate his claims. For this reason, therefore, the Court dismisses the Applicant's request to be paid the sum of Tanzanian Shillings One Million and Twenty Thousand (TZS 1 020 000) as reparation for material prejudice.

## ii. Moral prejudice

93. The Court notes that moral prejudice is that which results from suffering, anguish and from changes in the living conditions for the victim and his family as a result of a human rights violation.<sup>27</sup> In this regard, the Court restates, in line with its jurisprudence, that prejudice is assumed in cases of human rights violations and the assessment of the amount to be awarded must be undertaken in fairness taking into account the circumstances of the case.<sup>28</sup>
94. The causal link between the wrongful act and moral prejudice "can result from the human rights violation, as a consequence thereof, without a need

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<sup>25</sup> *Nguza Viking (Babu Seya) and Another v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, § 15 and *Kijiji Isiaga v. United Republic of Tanzania*, ACtHPR, Application No. 011/2015, Judgment of 25 June 2021 (reparations), § 20.

<sup>26</sup> *Msuguri v. Tanzania* (merits and reparations), *supra*, § 122; *Elisamehe v. Tanzania* (merits and reparations), *supra*, § 97 and *Guehi v. Tanzania* (merits and reparations), *supra*, § 15.

<sup>27</sup> *Mtikila v. Tanzania* (reparations), *supra*, § 34; *Cheusi v. Tanzania* (judgment), *supra*, § 150 and *Viking and Another v. Tanzania* (reparations), *supra*, § 38.

<sup>28</sup> *Guehi v. Tanzania* (merits and reparations), *supra*, § 55; and *Rashidi v. Tanzania* (merits and reparations), *supra*, § 58.



to establish causality as such”.<sup>29</sup> In such instances, the Court awards lump sums for moral loss.<sup>30</sup>

95. Having found that the Respondent State violated the Applicant’s right to free legal assistance, contrary to Article 7(1)(c) of the Charter, the Court finds that he suffered moral prejudice and that he is entitled to compensation.
96. Consequently, in the exercise of its discretion, the Court awards the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300 000) as reparation for the moral prejudice sustained as a result of the violation.<sup>31</sup>

## **B. Non-pecuniary reparations**

97. The Applicant does not specify his claims for non-pecuniary reparations. Nevertheless, in his Application, he prays the Court to grant “any other order(s) that it may deem fit and just to grant in the circumstances of this application.”

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98. For its part, the Respondent State prays that the Applicant’s prayers be dismissed.

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99. Given the Applicant’s failure to either particularise his claims or lead evidence in support thereof, the Court concludes that the Applicant fails to establish a case for him to be awarded any non-pecuniary reparations. The Court, therefore, does not make any award for non-pecuniary reparations.

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<sup>29</sup> *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; and *Konaté v. Burkina Faso* (reparations), *supra*, § 58.

<sup>30</sup> *Zongo and Others v. Burkina Faso* (reparations), *supra*, §§ 61-62.

<sup>31</sup> *Evarist v. Tanzania* (merits), *supra*, § 90; and *Paulo v. Tanzania* (merits), *supra*, § 111.

## IX. COSTS

100. The Applicant did not make any submissions on costs.

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101. The Respondent State prays that the costs of the Application be borne by the Applicant.

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102. The Court notes that Rule 32(2) of its Rules provides that “unless otherwise decided by the Court, each party shall bear its own costs.”

103. In the instant case, the Court does not find any justification to depart from the above provision and, therefore, rules that each Party shall bear its own costs.

## X. OPERATIVE PART

104. For these reasons,

THE COURT,

*Unanimously*

*On jurisdiction*

- i. *Dismisses* the objection to its material jurisdiction;
- ii. *Declares* that it has jurisdiction.

*On admissibility*

- iii. *Dismisses* the objection to the admissibility of the Application;
- iv. *Declares* the Application admissible.

*On merits*

- v. *Holds* that the Respondent State did not violate the Applicant's right to non-discrimination under Article 2 of the Charter;
- vi. *Holds* that the Respondent State did not violate the Applicant's right to equal protection of the law under Article 3(2) of the Charter;
- vii. *Holds* that the Respondent State did not violate the Applicant's right to fair trial under Article 7(1)(a) of the Charter;
- viii. *Holds* that the Respondent State violated the Applicant's right to a fair trial, provided for under Article 7(1)(c) of the Charter, as read together with Article 14(3)(d) of the ICCPR, due to the failure to accord the Applicant free legal assistance.

*On reparations*

*Pecuniary reparations*

- ix. *Dismisses* the Applicant's claim for reparations for compensation for his alleged material loss;
- x. *Orders* the Respondent State to pay the Applicant the sum of Tanzanian Shilling Three Hundred Thousand (TZS 300 000) as reparations for moral prejudice as a result of the violation of his right to free legal assistance;
- xi. *Orders* the Respondent State to pay the amount indicated under (x) above free from taxes effective six (6) months from the date of notification of this Judgment, failing which it will 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 is fully paid.

*On non-pecuniary reparations*

- xii. *Dismisses* the prayer for non-pecuniary reparations.

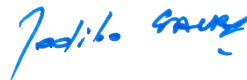
*On implementation and reporting*


- xiii. *Orders* the Respondent State to submit to this Court, within six (6) months from the date of notification of the present Judgment, a report on the measures taken to implement the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.


*On costs*

- xiv. *Orders* each Party to bear its own costs.


**Signed:**


Modibo SACKO, Vice-President; 


Ben KIOKO, Judge; 


Rafaâ BEN ACHOUR, Judge; 


Suzanne MENGUE, Judge; 


Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Blaise TCHIKAYA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Dennis D. ADJEI, Judge; 

and Robert ENO, Registrar.



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Done at Arusha, this Third Day of September in the Year Two Thousand and Twenty-Four in English and French, the English text being authoritative.

