

**JUDGMENT SUMMARY**

**GERALD KOROSO KALONGE V. UNITED REPUBLIC OF TANZANIA**

**APPLICATION No. 024/2018**

**JUDGMENT ON MERITS AND REPARATIONS**

**13 NOVEMBER 2024**

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

**Arusha, 13 November 2024:** The African Court on Human and Peoples' Rights ("the Court"), today, delivered a Judgment in the case of *Gerald Koroso Kalonge vs United Republic of Tanzania*.

Gerald Koroso Kalonge ("the Applicant") is a national of the United Republic of Tanzania ("the Respondent State"). At the time of filing the Application, he was incarcerated in Ruanda Central Prison, Mbeya, awaiting execution of a death sentence following his conviction for murder. The Applicant alleged a violation of his rights during the domestic proceedings that culminated in his conviction and subsequent death sentence. He sought redress from the court, requesting the annulment of his conviction and sentencing, his release from prison, and compensation for his wrongful sentencing to death.

The Court observed that, 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"), it had to, first, determine its jurisdiction to hear the Application. In this regard, the Respondent State raised an objection regarding the Court's material jurisdiction, asserting that the Court lacked either original or appellate jurisdiction to intervene in respect of the findings of domestic courts. In addressing this objection, the Court reiterated its established position that it does not exercise original or domestic jurisdiction over decisions of domestic courts. It, however, retains the authority to evaluate whether domestic proceedings were conducted in a manner that aligns with the standards set forth in international human rights instruments ratified by the concerned State. Therefore, the Court held that its material jurisdiction was satisfied.

Although the other aspects of its jurisdiction were not contested by the Respondent State, the Court examined them as required by its Rules. In this regard, the Court found that it had personal jurisdiction since, on 29 March 2010, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol. This Declaration allows individuals to file applications against the Respondent State in accordance with Article 5(3) of the Protocol. The Court underscored that the Respondent State's

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withdrawal of the said Declaration on 21 November 2019 did not affect this Application, as the withdrawal took effect on 22 November 2020, while the Application was filed at the Court on 28 September 2018.

With respect to temporal jurisdiction, the Court found that the alleged violations were based on facts that occurred in 2015, which is after the Respondent State ratified the Protocol and, therefore, the Court's temporal jurisdiction was satisfied. Regarding territorial jurisdiction, the Court held that the alleged violations occurred within the Respondent State's jurisdiction. Consequently, territorial jurisdiction was also established.

In terms of admissibility of the application, as empowered by Article 6 of the Protocol, the Court had to determine whether the Application had fulfilled the requirements of admissibility, as provided under Article 56 of the Charter and Rule 50 of the Rules of Court ("the Rules"). The Court first considered the objection raised by the Respondent State on non-exhaustion of local remedies. In this regard, it held that the Applicant was convicted before the High Court of Tanzania on 30 June 2015. He then appealed to the Court of Appeal, the highest judicial organ in the Respondent State which dismissed his appeal on 12 October 2017. The Court thus held that the Applicant had exhausted local remedies as required by the Charter and the Rules.

Although the other conditions of admissibility were not challenged by the Respondent State, the Court still had to satisfy itself that the Application complied with all the admissibility requirements as obligated by Article 6 of the Protocol.

In this regard, it held that, the Applicant had been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules. It also held that the claims made by the Applicant sought to protect his rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union and thus the Application was compatible with Rule 50(2)(b) of the Rules. Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules and also that the Application was not based exclusively on news disseminated through mass media in fulfilment of Rule 50(2)(d) of the Rules.

As to the reasonableness of time for filing the Application, the Court noted that the Application was filed 11 months and 16 days after exhaustion of local remedies. Given that the Applicant is a lay and incarcerated person who filed the Application before the Court without counsel's assistance, the Court held that the Application was filed within a reasonable time in accordance with Rule 50(2)(f) of the Rules. Lastly, the Court found

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that the case had not been previously settled before another international tribunal and was thus in compliance with Rule 50(2)(g) of the Rules.

On the merits of the case, the Court considered whether the Respondent State violated the Applicant's rights to equality and equal protection of the law; life; dignity; fair trial; the enjoyment of his family life and free movement as protected under the Charter.

On the allegation of the violation of the right to equality and equal protection of the law, the Court found that the Applicant had not proved the said allegation and, therefore, held that the Respondent State had not violated Article 3 of the Charter.

On the alleged violation of the right to life, the Court noted, in the Respondent State, the death penalty was provided for by the Penal Code and was meted out by the High Court, which was a competent court. As regards whether it was meted out following due process, although, the Court did not establish any fault with the trial process leading to the Applicant's conviction it noted that the death penalty was applied mandatorily thus leaving the judge with no discretion in sentencing. The preceding, the Court noted, was a breach of the principle of due process. Due to the violations of due process that the mandatory death penalty occasions, the Court held that the Respondent State had violated the right to life under Article 4 of the Charter.

The Court also determined that the Applicant's right to dignity under Article 5 of the Charter had been violated due to being sentenced to suffer death by hanging because hanging is inherently degrading and encroaches upon dignity.

With regards to the alleged violation of the right to a fair trial under Article 7 of the Charter, the Court, after assessing the Applicant's allegations of relating to the insufficient of the evidence on which his conviction was founded; the domestic courts' reliance on DNA evidence; and the acquittal of Applicant's co-appellants, found nothing to fault the approach taken by domestic courts. Consequently, the Court held that the Respondent State did not violate the Applicant's right to a fair trial.

The Court also found that the Applicant's right to family life under Article 18 of the Charter, and right to free movement under Article 12 of the Charter were not violated, as the allegations were based on the Applicant's conviction and sentence which the Court had not faulted.

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The Court having established the violation of Articles 4 and 5 of the Charter as regards the mandatory death penalty and execution of the death sentence by hanging, ordered the Respondent State to pay the Applicant damages in the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as compensation for the moral anguish suffered. The Court further ordered the Respondent State to, within six months, remove the mandatory the death penalty from its statutes and to expunge hanging as a method of executing the death penalty. The Court also ordered the Respondent State to, within one year, remove the Applicant from death-row and re-hear his case on sentencing based on a procedure that allows for judicial discretion.

The Court, however, rejected the Applicant's request to quash his conviction, noting that it had not found the Applicant's conviction to be illegal. Regarding the prayer for release, the Court held that the Applicant failed to show specific and compelling circumstances to justify his release and therefore rejected this request.

The Court also ordered that the judgment be published within three months, on the websites of the Respondent State's Judiciary, and the Ministry for Constitutional and Legal Affairs and for the Respondent State to report on implementation of the judgment within six months of notification.

Each Party was ordered to bear its own costs.

Pursuant to Rule 70(3) of the Rules, Justice Blaise Tchikaya and Justice Dumisa B. Ntsebeza issued Declarations on the issue of the death penalty.

### **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/024/2018>

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 [www.african-court.org](http://www.african-court.org).*