

## JUDGMENT SUMMARY

### EDISON SIMON MWOMBeki V. UNITED REPUBLIC OF TANZANIA

#### APPLICATION NO. 030/2018

#### JUDGMENT ON MERITS AND REPARATIONS

#### 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), delivered a judgment in the case of *Edison Simon Mwombeki v. United Republic of Tanzania*.

Edison Simon Mwombeki (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 Butimba Central Prison in Mwanza, having been tried, convicted, and sentenced to 30 years of imprisonment for the offence of rape. The Applicant alleged violation of his rights during proceedings before the national courts.

In relation to jurisdiction, the Respondent State objected to the Court's material jurisdiction and claimed that it is not vested with appellate jurisdiction to "acquit the Applicant from prison". The Respondent State further argued that the Applicant had not adduced any violation of human rights which he alleged to be occasioned to him. Instead, he only mentioned the fact that his rights were violated but failed to indicate how the violation was occasioned.

With regard to the contention that the Court would be exercising appellate jurisdiction, the Court reiterated its position that it does not exercise appellate jurisdiction with respect to claims already examined by national courts. At the same time, however, and even though the Court is not an appellate court vis-à-vis domestic courts, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned. In conducting the aforementioned task, the Court does not thereby become an appellate court.

As to the Respondent State's claim that the Court lacked jurisdiction to grant an order for release, the Court recalled Article 27(1) of the Protocol which provides that "[if the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation." The Court concluded, therefore, that it has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation

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necessitated such an order. For these reasons, the Court dismissed the objection raised by the Respondent State.

The Court further noted that given that the alleged violations presented before it pertained to rights enshrined in the Charter, to which the Respondent State is a Party, it possessed the necessary material jurisdiction to examine the Application.

Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined them. 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, which allows individuals to file applications against the Respondent State as per Article 5(3) of the Protocol. The Court underscored that the Respondent State's withdrawal of the said Declaration, on 21 November 2019, did not affect this Application as the withdrawal took effect on 22 November 2020, which was after this Application had been filed, on 1 November 2018.

The Court also held that it had temporal jurisdiction as the alleged violations occurred after the Respondent State had become a party to the Protocol. Lastly, it found that it had territorial jurisdiction given that the facts of the matter occurred within the territory of the Respondent State.

The Court observed that pursuant to Article 6(2) of the Protocol, it must rule on the admissibility of the cases brought before it. In this regard, the Respondent State raised a general objection to the Application, by claiming that it not met the admissibility requirements. However, it did not substantiate its objection nor did it specify to which of the admissibility requirements the objection is addressed. Nevertheless, the Court assessed all admissibility criteria to ensure that the Application fulfilled the necessary standards.

Accordingly, the Court 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 allegations 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 complied 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. The Application was also not based exclusively on news disseminated through mass media, as it was based on court documents from the domestic courts of the Respondent State, in fulfilment of Rule 50(2)(d) of the Rules.

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The Court also observed that the Application had been submitted to the Court after exhausting local remedies. The Court noted that the Applicant appealed up to the Court of Appeal, the highest judicial organ of the Respondent State, and the appeal was determined when that Court rendered its judgment on 18 October 2016, in fulfilment of Rule 50(2)(e) of the Rules.

With regard to the requirement that the Application be submitted within a reasonable time, the Court noted that the final decision of the Court of Appeal of Tanzania was delivered on 18 October 2016 and the Applicant filed his Application before this Court on 1 November 2018. The Court found a period of two years and 14 days that was taken before filing his Application before this Court to be reasonable in these circumstances, considering, among others, that the Applicant is incarcerated, lay and self-represented, and, therefore, held that the requirement in Rule 50(2)(f) of the Rules had been met.

Lastly, the Court found 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. Therefore, the Court concluded that the Application was admissible and dismissed the Respondent State's general objection to the admissibility of the Application.

On the merits, the Court considered whether the Respondent State violated the Applicant's rights. Taking into consideration the Applicant's submissions, the Court considered that the main issue in this Application was the alleged violation of the Applicant's right to have his cause heard, protected under Article 7(1) of the Charter, even though the Applicant did not make an explicit reference to this provision of the Charter. The Court, therefore, considered this allegation first, before assessing the alleged violations of Articles 3(2) and 5 of the Charter.

The Applicant alleged that (i) the trial and appellate courts erred in law and fact by convicting him based on the improbable and implausible evidence of a single witness, as well as contradictory and inconsistent testimonies, and that (ii) the trial and appellate courts failed to adequately consider the evidence presented in his defence.

With regard to the first allegation, the Court dismissed the Applicant's claim and found that the Respondent State had not violated his right to be heard, protected under Article 7(1) of the Charter, after considering that the manner in which the proceedings before the domestic courts were conducted revealed no manifest errors requiring this Court's intervention. As to the second allegation, the Court noted that the Applicant did not make specific submissions or provide evidence to prove that the manner in which the proceedings before the domestic courts were conducted with regard to the consideration of the evidence in his defence

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led to any serious miscarriage of justice or led to a violation of the Applicant's right to be heard. In view of this, the Court found that the Respondent State did not violate the Applicant's right to be heard, protected under Article 7(1) of the Charter.

The Court further noted that the Applicant had not made any specific submissions nor provided evidence that the Respondent State violated his rights to equal protection of the law and to dignity protected under Articles 3(2) and 5 of the Charter, respectively. Accordingly, the Court found that there was no basis to find a violation and held that the Respondent State did not violate Articles 3(2) and 5 of the Charter.

Having found that the Respondent State had not violated any of the Applicant's rights, the Court dismissed the Applicant's prayers for reparations.

As to costs, the Court decided that each party should bear its own costs.

### **Further Information**

Further information about this case, including the full text of the decision of the Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0302018>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org).

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