AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

RASHIDI ROMANI NYERERE

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION No. 023/2018

JUDGMENT

13 NOVEMBER 2024

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The Court composed of: Modibo SACKO, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA – 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"),[1] Justice Imani D. ABOUD, President of the Court, and a national of Tanzania, did not hear the Application.

In the Matter of:

Rashid Romani NYERERE

Represented by William MWISIJO, Advocate, IRM Legal

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. Mr. Mark MULWAMBO, Director of Civil Litigation, Principal State Attorney, Office of the Solicitor General;
v. Ms. Alesia A. MBUYA, Assistant Director, Constitutional, Human Rights and Elections Petitions, Principal State Attorney;

[1] Rule 8(2), Rules of Court, 2 June 2010.

vi. Miss Narindwa SEKIMANGA, State Attorney, Office of the Solicitor General; and
vii. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. Rashidi Romani Nyerere (hereinafter referred to as "the Applicant") is a Tanzanian national. At the time of filing the Application, he was incarcerated at Ruanda Central Prison in Mbeya awaiting execution for murder. The Applicant alleges violation of his rights during the domestic proceedings that led to his conviction.

2. The Respondent State became Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 18 February 1984 and to the Protocol on 7 February 2006 and deposited the Declaration required under Article 34(6) of the Protocol on 29 March 2010, by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations. On 14 November 2019 it deposited with African Union Commission (hereinafter referred to as the "Commission"), an instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the day on which the withdrawal took effect, that is, 22 November 2020 being a period of one year after its deposit.[2]

[2] *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 8 August 2008, the Applicant murdered one Sail Nyerere Mwambinga in Swaya Village within Rungwe District in Mbeya Region.

4. On the same day, the Applicant was arrested and subsequently charged with murder before the High Court sitting at Mbeya. On the 1 October 2013, the High Court found the Applicant guilty of murder and sentenced him to suffer death by hanging.

5. The Applicant filed an Appeal to the Court of Appeal sitting at Mbeya which dismissed his Appeal on 3 September 2015.

B. Alleged violations

6. The Applicant contends that the domestic courts convicted him based on unlawfully obtained confession and exhibits. He also asserts that he was kept in police custody for seven days without being brought before the Court within 24 hours, as required by the law. The Applicant further claims that he was tortured while he was in police custody.

7. Accordingly, the Applicant submits that the Respondent State has violated his right to human dignity by subjecting him to torture and his right to a fair trial guaranteed in Articles 1, 3 and 5 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was received at the Registry on 23 August 2018. On 2 October 2018, the Registry requested the Applicant to file a signed copy of the Application and submit copies of the domestic court's judgments.

9. On 5 December 2018, the Applicant filed the signed Application and following a reminder, he filed copies of the judgments of national courts on 3 January 2019.

10. On 1 April 2019, the Court acting on its own motion granted the Applicant legal aid.

11. On 16 April 2019, the Registry served the Application on the Respondent State requesting it to file its Response within 60 days of receipt.

12. On 29 August 2019, the Respondent State filed its Response, and this was served on the Applicant on the same day for his Reply.

13. On 19 November 2019, the Applicant requested for an extension of time to file its Reply.

14. Notwithstanding reminders from the Registry, the Applicant did not file his Reply.

15. On the 27 April 2024, pleadings were closed and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

16. The Applicant prays the Court to find that the Respondent State violated Articles 1, 3, 4 and 5 of the Charter and to:

    i. Quash his conviction;
    ii. Grant him reparations.

17. In relation to jurisdiction, the Respondent State prays the Court to:

Declare that [it] is not vested with jurisdiction to adjudicate the matter before it.

18. In respect of admissibility, the Respondent State prays the Court to find that:

    i. … the Applicant has not met the admissibility [requirements] to fulfil the condition under Rule 40(5) of the Rules of Court or Article 56(5) and Article 6(2) of the Protocol;
    ii. … the Application is inadmissible;
    iii. … the Application be dismissed in accordance to Rule 38 of the Rules of Court;
    iv. … the cost of this Application be borne by the Applicant.

19. On merits and reparations, the Respondent State prays the Court to find that:

    i. [it] did not violate the provisions of Article 4 and 5 of the African Charter on Human and Peoples' Rights;
    ii. … the Application be dismissed for lack of merits;
    iii. … the Applicant continues to serve his sentence;
    iv. … the Applicant's prayers be dismissed;
    v. … the cost of this Application be borne by the Applicant.

V. JURISDICTION

20. The Court notes that pursuant to Article 3(1) of the Protocol:

    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 instruments ratified by the States concerned.
    2. In the event of a dispute as to whether the court has jurisdiction, the Court shall decide.

21. Pursuant to Rule 49(1) of the Rules, the Court "shall preliminarily ascertain its jurisdiction … in accordance with the Charter, the Protocol, and these Rules."

22. Based on the above provisions, the Court must, conduct a preliminary examination of its jurisdiction and dispose of any objections, if any.

23. The Court notes that in the present Application, the Court observes that the Respondent State objects 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

24. The Respondent State asserts that both Article 3(1) of the Protocol and Rule 26 of the Rules only accord the Court jurisdiction to deal with cases or disputes concerning the application and interpretation of the Charter, Protocol or any other relevant human rights Instrument ratified by the State concerned. It submits that the Court is not vested with the powers to quash a conviction delivered by domestic Courts nor does it have the appellate jurisdiction to uphold or reverse judgments of domestic courts merely depending on the manner in which evidentiary issues were considered by such courts. The Respondent State submits that the instant Application requires the Court to sit as a court of appeal on matters definitively resolved by its national courts.

25. In support of its submissions, the Respondent State cites the Court's decisions in *Werema Wangoko Werema and Waisiri Wangoko Werema v. Tanzania* and *Ernest Francis Mtingwi v. Malawi.*

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26. The Applicant maintains that his Application consistent with Article 3 of the Protocol, which allows the Court to receive and consider human rights cases related to the interpretation of the provisions of the Charter.

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27. The Court notes that under Article 3(1) of the Protocol, it has jurisdiction to examine "all cases and disputes submitted to it concerning the interpretation and Application of the Charter, this Protocol and any other relevant Human Rights Instruments ratified by the States concerned."

28. Regarding the Respondent State's contention that the Court is being called to act as an appellate court, the Court recalls its established case law that it does not have an appellate jurisdiction *vis-à-vis* the decisions of domestic courts.[3] However, this does not preclude it from examining the relevant proceedings of the domestic courts to determine whether they are conducted in accordance with the requisite standards set out in the Charter and other human rights instruments ratified by the Respondent State.[4] In the present Application, the Court finds that it would not be sitting as an appellate court by examining the allegations made by the Applicant.

29. As for the contention that the Court is not vested with powers to quash a conviction delivered by domestic courts, the Court recalls Article 27 of the Protocol which directs it to make appropriate orders to remedy any violation of human rights. Resultantly, the Court may order the quashing of a conviction if this amounts to appropriate redress for human rights violations. The Court, therefore, dismisses in the contention by the Respondent State on this point.

30. Consequently, the Court dismisses the objection and holds that it has material jurisdiction to consider the Application.

[3] *Ernest Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[4] *Kenedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26.

B. Other aspects of jurisdiction

31. The Court notes that its personal, temporal and territorial jurisdiction is not challenged by the Respondent State. However, being pursuant to Rule 49(1) of the Rules,[5] the Court must satisfy itself that all aspects of its jurisdiction are met before proceeding to determine the Application on merits.

32. In relation to its personal jurisdiction, the Court recalls that the Respondent State is a Party to the Protocol and had 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 place twelve (12) months after notice of such withdrawal, in this case, on 22 November 2020.[6]

33. Furthermore, the withdrawal of the Declaration has no bearing on matters pending prior to the filing of the withdrawal. This Application, having been filed before the date of the withdrawal, is thus unaffected by the withdrawal. Consequently, the Court holds that it has personal jurisdiction.

34. Regarding temporal jurisdiction, the Court notes that the present Application is based on the trial of the Applicant which was concluded at the Court of first instance and the Court of Appeal which pronounced its judgment on 3 September 2015. The Court observes that the Court of Appeal's judgment was delivered after the Respondent State had ratified the Protocol.[7] The Court, therefore, holds that it has temporal jurisdiction to hear this Application.

[5] Rule 49(1) Rules of Court, 1 September 2020.
[6] *Cheusi v. Tanzania*, *supra*, §§ 35-39.
[7] *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.

35. As regards its territorial jurisdiction, the Court notes that the alleged violations happened within the Respondent State's territory. In the circumstances, the Court holds that its territorial jurisdiction is established.

36. In view of all of the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

37. Pursuant to Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

38. Pursuant to Rule 50(1) of the Rules, "the 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 the Rules."

39. Rule 50(2) of the Rules,[8] 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

[8] Rule 40, Rules of Court, 2 June 2010.

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."

40. The Court notes that the Respondent State objects to the admissibility of the Application based on the non-exhaustion of local remedies as well as on the ground that the Application was not filed within a reasonable time. The Court will, therefore, consider the said objections before examining other admissibility requirements, if necessary.

A. Objection based on failure to exhaust local remedies

41. The Respondent State contends that the Applicant has not fulfilled the admissibility requirement provided under Rule 50(2)(e) of the Rules, as he did not exhaust all local remedies before filing the Application before the Court.

42. The Respondent State asserts that the Applicant's allegations of torture lack substantiation and were not raised during domestic proceedings. This, it argues, denied the domestic courts the chance to address the allegation. The Respondent State avers that if the Applicant had raised these allegations earlier, it would have had an opportunity to take corrective actions.

43. The Respondent State further submits that the Applicant failed to utilize the review procedure available at the Court of Appeal. It explains that under its domestic laws, where an appeal to the Court of Appeal has failed as in the present case, an accused could seek other judicial remedies including revision and review at the Court of Appeal. The Respondent State maintains that the remedies that can be obtained through the judicial review procedure

at the Court of Appeal must, pursuant to the jurisdiction of the Court, be available, effective and satisfactory.

44. In support of its contention, the Respondent State cites the judgment of the Court in *Tanganyika Law Society and the Legal and Human Rights Centre & Rev. Christopher Mtilika v. Tanzania*.

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45. The Applicant asserts that he pursued all available local remedies before filing the Application before the Court. He clarifies that his case reached its conclusion with a final ruling from the Respondent State's Court of Appeal.

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46. The Court notes that under Article 56(5) of the Charter, which is 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 is unduly prolonged.[9] The Court has consistently pointed out the rule of exhaustion of local remedies aims at offering States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the responsibility of the Respondent State.[10]

47. In the instant Application, the Court notes that the Applicant's appeal before the Court of Appeal, the highest domestic court of the Respondent State, was determined when a judgment was rendered on 3 September 2015. As the Court has previously held, the review procedure within the Respondent

[9] *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43; *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144.
[10] *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 44.

State's judicial system constitutes an extraordinary remedy that no Applicant was required to exhaust before seizing this Court.[11]

48. In relation to the contention that the Applicant is raising some allegations for the first time, the Court notes that the Applicant makes three main allegations of human rights violations. Firstly, he contends that the domestic courts convicted him based on unlawfully obtained confessions and exhibits. Secondly, he further alleges that he was remanded in police custody for seven days without being promptly brought before the Court, as mandated by law. Lastly, the Applicant alleges that he was subjected to torture during his time in police custody.

49. With regard to the first allegation, that the Applicant's conviction was based on unlawfully obtained evidence, the Court notes that the evidence which the Applicant impugns is the confession statement which was admitted by the High Court and upheld by the Court of Appeal. In respect of this issue, the Court notes, from the record, that this contention was key to the proceedings before both the High Court and the Court of Appeal. As a matter of fact, due to the contentious nature of the Applicant's confession, the High Court conducted a trial within a trial before admitting the confession statement. The Court of Appeal also had occasion to review the Applicant's confession and found that it had no reason to differ with the findings of the trial court.

50. Given the above, it is clear that the Applicant's allegations of unlawfully obtained evidence were dealt with by the domestic courts. The Court thus finds that the Applicant exhausted local remedies.

51. As for the second allegation, concerning prolonged detention in police custody, the Court observes, from the record, that the Applicant did not raise this issue during the domestic proceedings, thus it was not examined by the domestic courts. Consequently, the Court finds that the Applicant did not

[11] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, §§ 60-62; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (23 June 2016) 1 AfCLR 599, §§ 66-70.

exhaust local remedies in respect of this allegation. It thus finds this allegation inadmissible.

52. Regarding the third allegation, of torture by police, the Court notes that the Applicant did raise this issue before the national courts, particularly at the High Court. The High Court's conclusion was that the Applicant had failed to prove that he had been tortured before the confession statement was obtained. The Court of Appeal also took the view that the Applicant had failed to repudiate the prosecution's assertions that he had not been tortured. Given that domestic courts had occasion to evaluate the Applicant's allegations of torture, the Court finds that the Applicant exhausted local remedies in relation to this claim as well.

53. Consequently, while dismissing the Respondent State's objection, the Court holds that the Applicant exhausted local remedies as envisaged under Rule 50(2)(e) of the Rules only with regard to the allegation of violation of the right to fair trial, by reason of the admission of unlawfully obtained evidence, and the right to dignity due to his alleged torture.

B. Objection based on failure to file the Application within a reasonable time

54. The Respondent State contends that the Applicant has not fulfilled the admissibility requirements as provided under Rule 50(2)(f) of the Rules, as he did not file the Application within a reasonable timeframe.

55. In support of its position, the Respondent State contends that the Court of Appeal's decision was handed down on 3 September 2015 but the Applicant lodged this Application on the 5 December 2018 after three (3) years and three (3) months had elapsed. The Respondent State contends that a time lapse of such a duration cannot be considered as reasonable.

56. In buttressing its position, the Respondent States cites the decision of the African Commission on Human and Peoples' Rights in *Majuru v. Zimbabwe* and contends that a reasonable timeframe should concur with the other

renown human rights instruments such as the European Convention on Human Rights and the Inter-American Convention on Human Rights which provide for a period of six months.

57. The Respondent State further contends that the Applicant has not demonstrated compelling reasons as to why he did not file his Application within a reasonable time.

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58. The Applicant prays the Court to dismiss the objection contending that his Application has been duly filed in accordance with the Charter.

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59. The Court recalls that neither the Charter nor the Rules specify the time frame within which Applications must be filed after the exhaustion of local remedies. As per the Court's jurisprudence, however, "…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."[12]

60. Specifically, the Court notes that the decision of the Court of Appeal was rendered on 3 September 2015 while this Application was filed on 5 December 2018. The period at stake, therefore is, three years, and three months. The Court must, therefore, assess this timeframe to determine reasonableness.

61. Notably, in its jurisprudence, the Court has taken into consideration, among other factors, incarceration and being on death row with the resultant limitation on movement and access to information[13] and being without the

[12] *Nobert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92; *Thomas v. Tanzania* (merits), *supra*, § 73.
[13] *Igola Iguna v. United Republic of Tanzania*, ACtHPR, Application No. 020/2017, Judgment of 1 December 2022 (merits and reparations), §§ 37-38.

benefit of legal assistance as being relevant in determining the reasonableness of time.[14]

62. In the present case, the Applicant was a lay person and filed the present Application without counsel's assistance. Furthermore, he was incarcerated and on death row at the time of filing the Application.[15] His situation, therefore, affected his ability to aptly file the Application. As such, the period of three years and three months that he took to file the present Application is reasonable within the meaning of Rule 50(2)(f) of the Rules.[16]

63. Consequently, the Court dismisses the Respondent State's objection and holds that the Applicant filed the Application within a reasonable time as envisaged under Rule 50(2)(f) of the Rules.

C. Other conditions of admissibility

64. 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 are met.

65. 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.

66. The Court 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,

[14] *Thomas v. Tanzania* (merits), *supra*, § 73; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.
[15] *John Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 044/2016, Judgment of 13 February 2024 (merits and reparations), §§ 61-62.
[16] *Sebastian Germain Ajavon v. Republic of Benin* (merits and reparations) (29 March 2021) 5 AfCLR, 94 §§ 86-87; *Mwita v. Tanzania*, *ibid*; and *Reuben Juma and Gawani Nkende v. United Republic of Tanzania*, Consolidated Applications Nos. 015/2017 and 011/2018, Judgment of 5 September 2023 (merits and reparations), § 57.

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.

67. The Court also finds 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.

68. The Court further finds that the Application is not based exclusively on news disseminated through mass media as it is founded on legal documents in fulfilment with Rule 50(2)(d) of the Rules.

69. Concerning the admissibility requirement specified in Article 56(7) of the Charter, the Court notes that there is nothing on record to show that the Application concerns 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. The Court, thus, finds that the Application complies with Rule 50(2)(g) of the Rules.

70. Given all the above, the Court finds the Applicant's allegations admissible save for the allegation relating to his prolonged detention before trial.

VII. MERITS

71. The Applicant alleges that the Respondent State violated his rights under Articles 1, 3, 4 and 5 of the Charter. In his elaboration, however, the Applicant has not, with clarity, articulated the Respondent State's conduct that, supposedly, trigger the violation of each of the articles of the Charter that he has cited. Overall, however, the Court notes that two major grievances underlie the Applicant's case and these are that he was tortured and that the domestic courts convicted him based on unlawfully obtained

confessions and exhibits. The Court will thus proceed to examine these allegations in line with the applicable provisions of the Charter.

72. The Court notes that while the Applicant has cited Articles 4 and 5 of the Charter, he has not made any specific submissions about the propriety of the mandatory death sentence in human rights law. Nevertheless, and as the Court has previously held, instances involving the mandatory imposition of the death sentence in the legal framework of the Respondent State constitute a violation of both the right to life under Article 4 of the Charter and the right to the protection of dignity protected by Article 5 of the Charter.[17]

73. Given that the mandatory death sentence has been imposed on the Applicant, the Court deems it necessary to examine suo motu the implications of this punishment and its mode of execution in the field of human rights in the Respondent State, regardless of the conclusions of the two Parties on these issues.

74. The Court will, therefore, consider, in turn, the violation of Article 4 of the Charter in relation to the mandatory imposition of the death sentence; Article 5 of the Charter owing to the alleged torture suffered by the Applicant and also in relation to the execution of the mandatory death penalty by hanging; Article 7 of the Charter owing to the alleged admission of illegally obtained evidence; and Article 1 of the Charter.

A. Alleged violation of the right to life

75. The Applicant simply asserted that the Respondent State has "violated my rights against article 4…" He made no attempt to provide any details as regards his precise grievances in respect of the alleged violation.

[17] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, §§ 104-114*; Amini Juma v. United Republic of Tanzania* (merits and reparations) (30 September 2021) 5 AfCLR 431, §§ 120-131.

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76. The Respondent State, also without any elaboration, submitted that it "did not violate the provisions of Article 4 …" of the Charter.

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77. Regardless of the above, and notwithstanding the paucity of the Parties' submissions on this point, the Court considers it logical, given its jurisprudence, and the fact that the Applicant was mandatorily sentenced to death, to restate the human rights implications of the course of action taken by the Respondent State.

78. Article 4 of the Charter, the Court recalls, provides as follows: "[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

79. The Court takes cognisance of the fact that the Applicant was sentenced to suffer death under a regime that provides no discretion to the judicial officer seised of such cases. As the Court has held, by taking away the discretionary power of a judicial officer to impose a sentence on the basis of proportionality and the individual circumstances of a convicted person, the mandatory death sentence regime, which applies in the Respondent State, falls afoul of the requirements of due process in criminal proceedings.[18]

80. Further, and as also recognised by the Court, the mandatory imposition of the death sentence, as applied under the Respondent State's law, is also arbitrary within the meaning of Article 4 of the Charter as it deprives the judicial officer of the discretion to consider specific circumstances of particular cases, including whether such cases fall within the classification

[18] *Rajabu and Others v. Tanzania* (merits and reparations), supra, § 163; *Gozbert Henerico v. United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 10 January 2022, § 207.

of the rarest of cases for which a death penalty can be lawfully imposed.[19] The Court recalls that a system of mandatory capital punishment deprives the complainant of the most fundamental right, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her cause.[20]

81. Given the above, the Court holds that the Applicant's right to life, under Article 4 of the Charter, was violated by reason of being subjected to the mandatory imposition of the death penalty upon his conviction. The Court, therefore, reiterates its call to the Respondent State to expunge the mandatory nature of the death penalty from its law.

B. Alleged violation of the right to dignity

82. In relation to the alleged violation of the right to dignity, the Applicant contends that the Respondent State violated his right under Article 5 of the Charter by subjecting him to torture and forcing him to confess publicly.

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83. The Respondent State refutes the allegation and contends that this claim is a new allegation. It asserts that neither the High Court nor the Court of Appeal were given the chance to hear and determine this alleged violation and thus the Applicant is precluded from bringing the issue before this Court.

84. The Respondent State further contends that, since this is a new allegation, there is no credible evidence on record that could be used to decide on the matter. It also argues that given the longevity of the elapsed time, any sort of potential evidence that is to be used by the Applicant, might have gone

[19] *Dominic Damian v. United Republic of Tanzania*, ACtHPR, Application No. 048/2026, Judgment of 4 June 2024 (merits and reparations), § 128.
[20] *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 109 and *Juma v. Tanzania* (merits and reparations), *supra*, §§ 124-125.

through tampering and the Court should, therefore, deem such evidence inadmissible.

85. The Respondent State avers that the issue of admissibility of the Applicant's confession statement was brought up during the proceedings at the Court of Appeal which found that the confession statement was procured legally and was thus rightly admitted into evidence by the trial court.

86. The Respondent State also contends that the Applicant was arrested by the police and that the force used to detain and interrogate him was reasonable and that no excessive force was used and nor was he tortured while procuring the confession statement.

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87. The Court notes that Article 5 of the Charter provides:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman, or degrading punishment and treatment shall be prohibited.

88. The Court observes that the concept of human dignity holds a profound significance in the realm of individual rights. It serves as an essential foundation upon which the edifice of human rights is constructed. The right to dignity captures the very essence of the inherent worth and value that resides within every individual, irrespective of their circumstances, background, or choices. At its core, it embodies and upholds the principle of respect for the intrinsic humanity of each person and forms the bedrock of what it means to be truly human. It is in this sense that Article 5 absolutely

prohibits all forms of treatment that undermine the inherent dignity of an individual.[21]

89. In the instant Application, the Applicant alleges that he was tortured by police during the investigation of the crime with which he was charged and convicted. Despite the Respondent State's argument that this issue was not raised at the domestic level, the Court recalls its earlier finding, as manifest from the record, that the Respondent State's High Court addressed this issue and dismissed the Applicant's allegation. While assessing the validity and admissibility of the Applicant's confession, both the High Court and the Court of Appeal confirmed that the Applicant was not subjected to any ill-treatment or torture in the course of obtaining his confession.

90. In this connection, the Court recalls its consistent position that domestic courts are better positioned to evaluate the factual intricacies surrounding a case and in absence of any glaring errors or miscarriage of justice, the Court does not deem it imperative to supplant its own assessment and arrive at a different factual determination.[22]

91. In accordance with the principle that the burden of proof lies with the party making an assertion, the Court maintains that "[g]eneral statements to the effect that [a] right has been violated are not enough. More substantiation is required."[23] The Court notes that the Applicant has made no submissions to rebut the findings of both the High Court and the Court of Appeal and support his allegation that he was tortured. Accordingly, the Court dismisses the Applicant's allegation of being subjected to torture while he was in police custody. It thus holds that the Respondent State has not violated the Applicant's right to dignity by means of subjecting him to torture in order to extract a confession statement.

[21] *Makungu Misalaba v. United Republic of Tanzania*, ACtHPR, Application No. 033/2016, Judgment of 7 November 2023 (merits and reparations), § 165.
[22] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.
[23] *George Maili Kemboge v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 369, § 51.

92. The above findings notwithstanding, and although none of the Parties made submissions, the Court finds it apposite to reiterate its position on hanging as a method of execution of the death penalty. This is the case because the Applicant was sentenced to suffer death by hanging. As previously reiterated by the Court, the criminal punishment of death by hanging is incompatible with the right to dignity as protected in Charter and the Respondent State remains bound not subject anyone to death by hanging.[24]

93. The Court finds, therefore, that although the Applicant's allegations of the violation of his right to dignity due to his being subjected to torture and forced to confess are unfounded, his right to dignity was violated by his being sentenced to death under the mandatory regime as well as being sentenced to suffer death by hanging.

94. The Court, therefore, holds that the Respondent State has violated Article 5 of the Charter.

C. Alleged violation of the right to a fair trial

95. The Applicant contends that the Respondent State violated his right to a fair trial due to its reliance on a confession statement that was unlawfully obtained. He also contends that the exhibits accepted by the High Court and Court of Appeal were contrary to sections 38(1), (2) and (3) and 50, 51, and 57 of the Criminal Procedure Act of the Respondent State.

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96. The Respondent State refutes this allegation and contends that the issue of validity and admission of the confession statement was dealt with by the Court of Appeal in rendering its decision. The Respondent State further contends that the Court of Appeal found that the confession was true and properly admitted.

[24] Ibid.

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97. Article 7(1) of the Charter provides that "[e]very individual shall have the right to have his cause heard". Article 7 of the Charter, in its entirety, provides guarantees that are, centrally, meant to ensure the realization of the right to a fair trial. These include the right to be tried by an impartial tribunal as well as the right to be presumed innocent until proven guilty by a competent court.

98. In the present Application, the Court observes that the Applicant is questioning the manner in which the domestic Courts, particularly the High Court, assessed and admitted evidence against him. In so far as the Applicant is inviting the Court to consider the manner in which the domestic Courts dealt with evidential matters, the Court recalls that it has previously held that:

> …domestic Courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights Court, the Court cannot take up this role from the domestic Courts and investigate the details and particulars of evidence used in domestic proceedings.[25]

99. The Court notes, from the record, that the High Court convicted the Applicant while relying on testimonies provided by five prosecution witnesses, coupled with three items of documentary evidence including the Applicant's confession statement and two other exhibits. It is noteworthy that the statements offered by the prosecution witnesses PW1 and PW2 were very similar to the confession statement made by the Applicant. Given that the Applicant repudiated his confession statement, the High Court conducted a trial within a trial to determine the admissibility of the confession statement and the other evidence submitted by the prosecution.

[25] *Isiaga v. Tanzania* (merits), *supra*, § 65.

It was following from this that the confession statement and the other documentary evidence was admitted.

100. The Court also notes that the question of the admissibility of the Applicant's confession statement was addressed by the Court of Appeal. The Court of Appeal noted that the objection should have, ordinarily, been brought up before the High Court. Nevertheless, it went ahead and examined the validity and admissibility of the confession statement and the evidence presented by the prosecution. The Court of Appeal concluded that the Applicant was convicted not only based on the confession statement but also due to the testimony of the other prosecution witnesses who had been found to be credible.

101. In this regard, the Court of Appeal emphasised that the Applicant had first confessed to PW1 in confidence and also confessed later before a large gathering in the presence of PW1, PW2, PW3, PW4 and PW5. The Court of Appeal further noted that the statements by the witnesses were very similar in content to the confession statement by the Applicant. It thus concluded that there was sufficient evidence to convict the Applicant.

102. In its assessment, the Court does not see any manifest error or anomaly in the domestic courts' assessment of the evidence relied upon to convict the Applicant such as to warrant its intervention.

103. Consequently, the Court finds that the Respondent State has not violated the Applicant's right a fair trial under Article 7 of the Charter.

D. Alleged violation of Article 1 of the Charter

104. The Applicant alleges that by convicting him based on unlawfully obtained evidence and torturing him, the Respondent State has violated Article 1 of the Charter.

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105. Even though the Respondent State did not directly respond to this allegation, it maintains that the Applicant's conviction was in accordance with established law and procedure.

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106. The Court notes that Article 1 of the Charter imposes dual obligation on State Parties: the duty to recognize the rights guaranteed therein and to adopt legislative and other measures to give effect to these rights, duties and freedoms.

107. Accordingly, in assessing whether or not a State has violated Article 1 of the Charter, the Court examines not only the availability of domestic legislative measures taken by the State but also whether the application of those legislative or other measures is in line with the realization of the rights, duties and freedoms enshrined in the Charter, that is, the attainment of the objects and purposes of the Charter.

108. In the present Application, the Court observes that the Applicant alleges a violation of Article 1 of the Charter, primarily citing torture and unfairness in his trial. However, the Court has, found these allegations by the Applicant to be unsubstantiated. The Court has, nevertheless, found that the Respondent State violated Articles 4 and 5 of the Charter by reason of maintaining the mandatory death penalty as well as the prescription of hanging as a method of execution.

109. Given the findings above, the Court holds that the Respondent State violated Article 1 of the Charter.

VIII. REPARATIONS

110. The Applicant prays that the Court "allow my case and quash the whole proceedings of the high court and the court of appeal which their trial and

judgments was violated my human rights and … to order the Government of Tanzania to compensate me for the injury which was occurred …".

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111. The Respondent State prays that the Applicant's prayers be dismissed.

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112. Article 27(1) of the Protocol provides that:

> If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

113. The Court holds, pursuant to its jurisprudence that for reparations to be granted, the Respondent State should, first, be intentionally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where it is granted, reparation should cover the full damage suffered.[26]

114. The Court reiterates that the onus is on an Applicant to provide evidence to justify his/her prayers, particularly for material damages.[27] With regard to moral damages, the Court has held that the requirement of proof is not strict,[28] since it is presumed that there is prejudice caused when violations are established.[29]

[26] *Rajabu and Others v. Tanzania* (merits and reparations), *supra*, § 136; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119.
[27] *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139.
[28] *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 55.
[29] Ibid.

115. The Court also confirms that the measures that a State must take to remedy a violation of human rights include restitution, compensation, and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.[30]

116. In the instant Application, the Court has established that the Respondent State's conduct has violated the Applicant's right to life and right to dignity only. It is in respect of these violations, therefore, that the Court must assess the reparations due.

A. Pecuniary reparations

i. Material prejudice

117. The Court observes that the Applicant simply prayed the Court to order the Government of Tanzania to compensate him for the injury which was occasioned to him. The Applicant, however, did not specify quantum of compensation that he was claiming. He also did not provide any information explaining material prejudice he suffered, how this is linked with the violation of his rights under the Charter and how the Respondent State's liability is engaged.

118. Given the Applicant's failure to first, specify his material prejudice, and second, to prove the same, the Court dismisses the prayer for reparations for material prejudice.

ii. Moral prejudice

119. The Applicant does not expressly request the Court to grant him reparations for moral prejudice. He simply prays for the Court to compensate him for the injury suffered.

[30] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20.

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120. The Respondent State submits that the Applicant's prayers be dismissed.

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121. In line with its established case law, moral prejudice is presumed in cases of human rights violation. The quantum of damages, in this connection, is assessed based on equity, taking into account the circumstances of the case.[31]

122. In the instance Application, the Court finds that the violations suffered by the Applicant involve moral prejudice. These include imposition of the mandatory death penalty and the time he continues to spend on death row both of which are compounded by overall inhuman and degrading circumstances on death row. While the death sentence is yet to be carried out, the Applicant has inevitably suffered prejudice from the established violations caused by the very imposition of the mandatory death sentence.[32]

123. Given the circumstances of the case, and in light of the Court's jurisprudence that a judgment in favour of a victim is in itself a form of satisfaction and a reparation for moral damages,[33] the Court, in its discretion, awards the Applicant Tanzanian Shillings Three Hundred Thousand (TZS 300,000) for moral damages suffered.

B. Non-pecuniary reparations

i. Quashing of conviction

124. The Applicant prays the Court to "quash the whole proceedings of the high court and the court of appeal …".

[31] *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; *Umuhoza v. Rwanda* (reparations), *supra*, § 59; *Jonas v. Tanzania* (reparations), *supra*, § 23.
[32] *Damian v. Tanzania* (merits and reparations), *supra*, § 149.
[33] *Christopher Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 45.

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125. The Respondent State maintains that the Applicant's prayers be dismissed.

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126. Regarding the Applicant's prayer for quashing his conviction, the Court recalls that it can only make such an order in compelling circumstances.[34] Specifically, the Court notes that its finding of violations in the present Application only pertains to the non-compliance with the Charter of the mandatory death penalty as well as the means chosen for executing convicts. The Court considers that the nature of the violations does not reveal any circumstances that signifies that the Applicant's imprisonment amounts to a miscarriage of justice or an arbitrary decision. The Applicant also failed to elaborate on specific and compelling circumstances to justify the order for quashing the domestic courts' findings.

127. The Applicant's prayer is, therefore, not warranted, and the Court consequently dismisses it.[35]

128. The above notwithstanding, the Court recalls that it has held that orders such as vacating the death sentence are to be determined on a case-by case basis having due consideration mainly to proportionality between the measure sought and the extent of the violation established.[36] In the instant Application, given that the provision for the mandatory imposition of the death sentence in the Respondent State's legal framework violates the right to life protected in Article 4 of the charter, the Court, therefore, orders the Respondent State to vacate the Applicant's death penalty and remove him from death row.

[34] *Kalebi Elisamehe v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 265, § 112.
[35] *Stephen John Rutakikirwa v. United Republic of Tanzania*, ACtHPR, Application No. 013/2016, Judgment of 24 March 2022 (merits and reparations), § 88.
[36] *Rajabu and others v Tanzania* (merits and reparations), supra, § 156.

ii. Amendment of the law to ensure respect for life and dignity

129. Neither the Applicant nor the Respondent State made any specific prayers in respect of the need for amendment of laws to ensure respect for the rights to life and dignity. However, as per its jurisprudence, the Court holds that the consideration of this relief necessarily follows from its earlier findings in respect of the mandatory death penalty in the Respondent State. The inconsistency of the mandatory sentencing regime with the Charter makes it necessary for the Court to make orders dealing with this.[37]

130. The Court observes that in its previous judgments dealing with the mandatory imposition of the death penalty it has ordered the Respondent State to undertake all necessary measures to remove from its Penal Code the provision for the mandatory imposition of the death sentence.[38] The Court notes that to date it has issued several Rulings for the removal of the mandatory death penalty which were delivered in 2019, 2021, 2022, and 2023; yet, as at the date of the present judgment, the Court does not have any information to the effect that the Respondent State has implemented the said orders.

131. In the present judgment, the Court has again established that the mandatory imposition of the death penalty violates the right to life guaranteed under Article 4 of the Charter. It, therefore, holds that the said sentence ought to be removed from the statutes of the Respondent State within six months of the notification of the present Judgment.

[37] *Deogratius Nicholas Jeshi v. United Republic of Tanzania*, ACtHPR, Application No. 017/2016, Judgment of 13 February 2024 (merits and reparations) §§ 109-112.
[38] *Ghati Mwita v. United Republic of Tanzania* ACtHPR, Application No. 012/2019, Judgment of 1 December 2022 (merits and reparations), § 166; *Marthine Christian Msuguri v. United Republic of Tanzania*, ACtHPR, Application No. 052/2016, Judgment of 1 December 2022 (merits and reparations), § 128; *Henerico v. Tanzania* (merits and reparations), *supra,* § 207 and *Juma v. Tanzania* (merits and reparations), *supra,* § 170.

132. Similarly, as per its jurisprudence,[39] this Court has held that a finding of violation of the right to dignity owing to the use of hanging as a method of execution of the death penalty warranted an order that the said method be removed from the laws of the Respondent State. Considering its findings in this Judgment, the Court orders the Respondent State to take all necessary measures to amend its laws and remove "hanging" from its laws as the method of execution of the death sentence, within six months of the notification of the present Judgment.

iii. Rehearing

133. Although neither of the Parties made submissions specifically addressing the need for a rehearing, the Court considers this to be a necessary consequence given its earlier findings.

134. The Court reaffirms its earlier findings that the violations in this case did not impact on the Applicant's guilt and conviction. The said findings affect only the sentencing and to the extent of the mandatory nature of the penalty. The Court finds, therefore, that a remedy is warranted only as to the extent of the mandatory death penalty.[40]

135. In the circumstances, the Court orders the Respondent State to take all necessary measures for the rehearing of the case on the sentencing of the Applicant through a process that does not allow a mandatory imposition of the death penalty, while upholding the full discretion of the judicial officer.[41]

[39] *Jeshi v. Tanzania* (merits and reparations), §§ 111, 112, 118; *Romward William v. United Republic of Tanzania*, ACtHPR, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), § 94.
[40] *Habyalimana Augustino and Muburu Abdulkarim v United Republic of Tanzania*, ACtHPR, Application No. 015/2016, Judgment of 3 September 2024 (merits and reparations), §§ 240-241.
[41] *Chrizant John v. United Republic of Tanzania*, ACtHPR, Application No. 049/2016, Judgment of 7 November 2023 (merits and reparations), § 150.

iv. Publication of the judgment

136. None of the Parties made any submissions in respect of the publication of this judgment.

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137. The Court considers, however, that for reasons now firmly established in its practice and in the peculiar circumstances of this case, publication of this judgment is necessary. Given the current state of law in the Respondent State, threats to life associated with the mandatory death penalty persist. The Court also notes that it has not received any indication that necessary measures have been taken for the law to be amended and aligned with the Respondent State's international human rights obligations. The Court thus finds it appropriate to order publication of this judgment within a period of three months from the date of notification.

v. Implementation and reporting

138. The justification provided earlier, in respect of the Court's decision to order publication of the judgment, is equally applicable in respect of implementation and reporting. The Court notes that in its previous judgments on the repeal of the provision on the mandatory death penalty, the Respondent State was directed to implement the decisions within one year of issuance of the same.[42]

139. The Court observes that, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes beyond the individual case of the Applicant and is systemic in nature. The same applies to the violation of the right to dignity by reason of the method of execution, death by hanging. The Court further notes that its finding in this judgment bears on a supreme right in the Charter, that is, the right to life.

[42] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 171; *Henerico v. Tanzania* (merits and reparations), *supra,* § 203.

140. In view of the foregoing, the Court deems it necessary to order the Respondent State to report on the implementation of this judgment in accordance with Article 30 of the Protocol. The report should detail the steps taken by the Respondent State to remove the impugned provision from its Penal Code.

141. The Court further notes that the Respondent State has not provided any information on the implementation of its judgments in any of the earlier cases where it was ordered to repeal the mandatory death penalty and the deadlines that the Court set have since lapsed. In view of this fact, the Court still considers that the orders are warranted both as an individual protective measure and as a general restatement of the obligation and urgency behoving on the Respondent State to remove the mandatory death penalty and provide alternatives thereto. The Court holds, therefore, that the Respondent State is under an obligation to report on the steps taken to implement this judgment within six months from the date of notification of this judgment.

IX. COSTS

142. In their submissions, both Parties prayed the Court to order that the other Party bears the costs.

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143. Pursuant to Rule 32(2) of the Rules, “unless otherwise decided by the Court, each Party shall bear its own costs”.

144. In the instant case, the Court does not find any reason for departing from its established practice and thus orders that each Party will bear its own costs.

X. OPERATIVE PART

145. 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. *Dismisse*s the objections to the admissibility of the Application;
iv. *Declares* the Application inadmissible in respect of the allegation of prolonged police detention before trial made by the Applicant;
v. *Declares* the Application admissible in respect of the allegation of violation of the right to a fair trial by reason of the admission of unlawfully obtained evidence and the right to dignity due to his alleged torture.

On merits

vi. *Holds* that the Respondent State did not violate the Applicant's right to fair trial under Article 7(1) of the Charter;
vii. *Holds* that the Respondent State violated Articles 1 of the Charter.

By a majority of Eight (8) Judges for, and Two (2) Judges against, Judges Blaise TCHIKAYA and Dumisa B. NTSEBEZA dissenting on the issue of the death penalty;

viii. *Holds* that the Respondent State violated the Applicant's right to life under Article 4 of the Charter due to the mandatory imposition of the death penalty;

ix. *Holds* that the Respondent State violated the Applicant's right to dignity under Article 5 of the Charter by reason of prescribing hanging as a method for execution of the death penalty.

Unanimously,

On reparations,

On pecuniary reparations

x. *Dismisses* the Applicant's claims for pecuniary reparations;

xi. *Grants* the Applicant damages for the moral prejudice he suffered and awards him the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000);

xii. *Orders* the Respondent State to pay the sum awarded under (xi) above, free from tax as fair compensation to be made within six months from the date of notification of this Judgment, failing which it will be required to 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

xiii. *Dismisses* the Applicant's prayer for the quashing of his conviction;

xiv. *Orders* the Respondent State to revoke the mandatory death sentence imposed on the Applicant and remove him from death row;

xv. *Orders* the Respondent State to immediately, take all necessary steps, within six months, to remove the mandatory the death penalty from its Penal Code as it impinges on the discretion of the judicial officers in imposing sentences;

xvi. *Orders* the Respondent State to take all necessary measures within one year of the notification of this Judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer;

xvii. *Orders* the Respondent State to take all necessary steps, within six months as from the date of notification of this judgment to remove from its laws "hanging" as a means of execution of the death penalty;

xviii. *Orders* the Respondent State to publish this judgment, within a period of three months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one year after the date of publication.

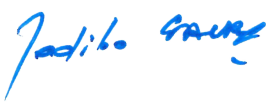
Implementation and reporting

xix. *Orders* the Respondent State to submit to it, within six months from the date of notification of this Judgment, a report on the status of implementation of the decision set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

xx. *Orders* that each Party shall bear its own costs.

Signed:

Modibo SACKO, Vice President; 

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;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol, and Rules 70(3) of the Rules, the Declarations of Justice Blaise TCHIKAYA and Justice Dumisa NTSEBEZA are appended to this Judgment.

Done at Arusha, this Thirteenth Day of November in the year Two Thousand and Twenty-Four in English and French, the English text being authoritative.