

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

**THE MATTER OF**

**EDISON SIMON MWOMBEKI**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 030/2018**

**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 and 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"),<sup>1</sup> Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Edison Simon MWOMBEKI

*Self-represented.*

Versus

UNITED REPUBLIC OF TANZANIA

*Represented by*

Dr Ally POSSI, Solicitor General,  
Office of the Solicitor General.

After deliberation,

*Renders this Judgment.*

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

## **I. THE PARTIES**

1. Edison Simon Mwombeki (hereinafter referred to as “the Applicant”) is a national of the United Republic of Tanzania. At the time of filing the Application, he was imprisoned at Butimba Central Prison, Mwanza, having been tried, convicted and sentenced to 30 years imprisonment for the offence of rape. He alleges 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, on 29 March 2010, the Respondent State 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 (hereinafter referred to as “NGOs”). On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.<sup>2</sup>

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

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

3. It emerges from the record that on 17 January 2014, the Applicant, a bishop of the Tanzania Field Evangelism Church, allegedly raped a 16-year-old

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<sup>2</sup> *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

girl. The Applicant was arrested on 2 February 2014, and charged with the offence of rape. He was tried and, on 14 August 2015, convicted of rape and sentenced to 30 years imprisonment by the District Court of Nyamagana, sitting in Nyamagana, Mwanza (Criminal Case No. 33/2014).

4. The Applicant then appealed to the High Court of Tanzania sitting at Mwanza (Criminal Appeal No. 119/2015) which, on 14 December 2015, dismissed the appeal.
5. Dissatisfied with this decision, the Applicant appealed to the Court of Appeal of Tanzania sitting at Mwanza (Criminal Appeal No. 94/2016) which, on 18 October 2016, dismissed the appeal.
6. The Applicant, further, filed an application for review at the Court of Appeal of Tanzania, at Mwanza (Criminal Application No. 6/08 of 2017), which on 9 July 2018, dismissed the application for review.

## **B. Alleged violations**

7. The Applicant alleges violation of the following rights:
  - i. The right to equal protection of the law under Article 3(2) of the Charter.
  - ii. The right to dignity under Article 5 of the Charter.

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

8. The Application was filed on 1 November 2018. On 17 December 2018, the Court requested the Applicant to file his submissions on reparations. On 29 January 2019, the Applicant filed his submission on reparations.
9. On 7 April 2019, the Application and the submissions on reparations were served on the Respondent State.

10. The Respondent State filed its Response, on 25 November 2000 together with a request to file pleadings out of time. The Court decided to accept the pleadings filed out of time and transmitted them, on 27 November 2020, to the Applicant for its Reply within 30 days of receipt. The Applicant did not file a Reply.
11. Pleadings were closed on 6 June 2024 and the Parties were duly notified.

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

12. The Applicant prays the Court to:
  - i. Find that the Respondent State violated the Applicant's rights provided under the Charter;
  - ii. Order the Respondent State to restore the Applicant's liberty by releasing him from prison;
  - iii. Order the Respondent State to pay the Applicant reparations in the amount of Five Hundred Million Tanzanian Shillings (TZS 500,000, 000) for moral damage.
  - iv. Order the Respondent State to pay the Applicant reparations in the amount of Three Hundred Sixty-Six Million and Five Hundred Thousand Tanzanian Shillings (TZS 366,500,000) for loss of income;
  - v. Order the Respondent State to pay the Applicant reparations in the amount of One Hundred Million Tanzanian Shillings (TZS 100,000,000) for life expenses;
  - vi. Order the Respondent State to pay the Applicant reparations in the amount of Eight Million Tanzanian Shillings (TZS 8,000,000) for Secondary Education for two children;
  - vii. Order the Respondent State to pay the Applicant reparations in the amount of Twenty Million Tanzanian Shillings (TZS 20,000,000) for College Education for two children;
  - viii. Order the Respondent State to pay the Applicant reparations in the amount of One Hundred and Fifty Million Tanzanian Shillings (TZS 150,000,000) for Service to the Church and fellows;

- ix. Order the Respondent State to pay reparations in the amount of Fifty Million Tanzanian shillings (TZS 50,000,000) for costs incurred by the Applicant on transport;
- x. Order the Respondent State to pay the Applicant reparations in the amount of One Hundred Sixty-Six Million and Five Hundred Thousand Tanzanian Shillings (TZS 166,500,000) as compensation for affecting his properties.

13. With regard to jurisdiction and the admissibility of the Application, the Respondent State prays the Court to order that:

- i. The Court has no jurisdiction to act as an Appellate Court towards the grounds of appeal pronounced by the Applicant;
- ii. The Applicant has not met the admissibility requirements as provided by Rule 39(1) of the Rules of Court;<sup>3</sup>
- iii. The Application be declared inadmissible;
- iv. The Application be dismissed in accordance with Rule 38 of the Rules of Court;<sup>4</sup>
- v. The cost of the Application be borne by the Applicant.

14. With regard to the merits of the Application, the Respondent State prays the Court to order that:

- i. The Respondent State did not violate the provisions of Article 3(2) and 5 of the Charter against the justices and rights of the Applicant;
- 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.

15. In Response to the Applicant's submissions on reparations, the Respondent State prays the Court to:

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<sup>3</sup> Corresponding to Rule 49(1) of the Rules of 25 September 2020.

<sup>4</sup> Corresponding to Rule 48 of the Rules of 25 September 2020.

- i. Dismiss the Applicant's prayer for reparations in its entirety with costs;
- ii. Grant any other relief(s) the Court may deem fit to grant.

## **V. JURISDICTION**

16. 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.

17. Pursuant to Rule 49(1) of the Rules, the Court "shall conduct a preliminary examination of its jurisdiction [...] in accordance with the Charter, the Protocol and these Rules."<sup>5</sup>

18. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

19. In the present Application, the Court notes that the Respondent State raises one objection to its material jurisdiction. The Court will first examine this objection before considering other aspects of its jurisdiction, if necessary.

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

20. The Respondent State claims that this Court is not vested with appellate jurisdiction to "acquit the Applicant from prison." The Respondent State further argues that the Applicant has not adduced any violation of human rights which he alleged to be occasioned to him. Instead, he only mentioned

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<sup>5</sup> Rule 39(1), Rules of Court, 2 June 2010.



the fact that his rights were violated but failed to indicate how the violation was made.

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21. The Applicant did not make submissions to dispute the Respondent State's claims.

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22. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged, are protected by the Charter or any other human rights instrument ratified by the Respondent State.<sup>6</sup>
23. The Court emphasises that its material jurisdiction is thus predicated on the Applicant's allegation of violations of human rights protected by the Charter or any other human rights instrument ratified by the Respondent State.<sup>7</sup> In the instant matter the Applicant alleges the violation of the right to equal protection of the law and of the right to dignity, protected under Articles 3(2) and 5 of the Charter, respectively.
24. Specifically with regard to the objection about the Court exercising appellate jurisdiction, the Court recalls its established jurisprudence that it is not an appellate body with respect to decisions of national courts.<sup>8</sup> However, "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned".<sup>9</sup> The Court would, therefore, not be sitting as an appellate court if it were to consider the Applicant's allegations.

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<sup>6</sup> *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18.

<sup>7</sup> *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477 § 33; *Elisamehe v. Tanzania, ibid*, § 18.

<sup>8</sup> *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

<sup>9</sup> *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania, supra*, § 33.

25. The Court further notes that the Respondent State's objection concerns the claim that the Court lacks jurisdiction to grant an order for release. In this regard, 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' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation." Therefore, the Court has jurisdiction to grant different types of reparations, including release from prison, provided that the alleged violation has been established.<sup>10</sup>
26. For these reasons, the Court dismisses the objection raised by the Respondent State and holds that it has material jurisdiction in this Application.

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

27. The Court observes that no objection has been raised with respect to 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.
28. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that, on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.<sup>11</sup> Since any such withdrawal of the Declaration takes effect 12 months after the notice of withdrawal is deposited, the effective date for the Respondent

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<sup>10</sup> *Rajabu Yusuph v. United Republic of Tanzania*, ACtHPR, Application No. 036/2017, Ruling of 24 March 2022 (admissibility), § 27.

<sup>11</sup> *Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 35-39.

State's withdrawal was 22 November 2020.<sup>12</sup> This Application, having been filed before the Respondent State deposited its notice of withdrawal, is thus not affected by it. The Court, therefore, finds that it has personal jurisdiction to examine the present Application.

29. In respect of its temporal jurisdiction, the Court notes that the violations alleged by the Applicant arose after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the Court observes that the Applicant remains convicted based on what he considers an unfair process. Therefore, it holds that the alleged violations can be considered to be continuing in nature.<sup>13</sup> For these reasons, the Court finds that it has temporal jurisdiction to examine this Application.
30. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In these circumstances, the Court holds that it has territorial jurisdiction.
31. In light of all of the above, the Court holds that it has jurisdiction to determine the present Application.

## VI. ADMISSIBILITY

32. 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".

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<sup>12</sup> *Ingabire Victoire Umuhoza v. United Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67.

<sup>13</sup> *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

33. In line with Rule 50(1) of the Rules,<sup>14</sup> “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 these Rules.”
34. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

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

- a. Indicate their authors even if the latter request anonymity;
  - b. Are compatible with the Constitutive Act of the African Union and with the Charter;
  - c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
  - d. Are not based exclusively on news disseminated through the mass media;
  - e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
  - f. Are submitted 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. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.
35. The Court notes that although it raises a general objection to the admissibility of the present Application, the Respondent State does not substantiate its objection nor does it specify to which of the admissibility requirements the objection is addressed. The Court will therefore proceed

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<sup>14</sup> Rule 40 of the Rules of Court, 2 June 2010.

to consider all the admissibility requirements, in line with Rule 50(1) of the Rules, to satisfy itself that the Application is admissible before proceeding.

36. 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.
37. The Court also notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. Furthermore, 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. Additionally, the Application does not contain any claim or prayer that is incompatible with a provision of the said Act. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter and holds that it meets the requirement of Rule 50(2)(b) of the Rules.
38. 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.
39. The Application is not based exclusively on news disseminated through mass media, as it is founded on court documents from the domestic courts of the Respondent State, in fulfilment of Rule 50(2)(d) of the Rules.
40. The Court observes that the Application has been submitted to the Court after exhausting local remedies. The Court notes that the Applicant appealed up to the Court of Appeal, the highest judicial organ of the Respondent State,<sup>15</sup> 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.

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<sup>15</sup> *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 63; *Deogratius Nicolaus Jeshi v. United Republic of Tanzania*, ACTHPR, Application 017/2016, Judgment of 13 February 2024 (merits and reparations), § 46.

41. With regard to the requirement that the Application be submitted within a reasonable time, the Court notes 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 finds 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,<sup>16</sup> and, therefore, holds that the requirement in Rule 50(2)(f) of the Rules has been met.
42. Further, 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, or the provisions of the Charter, in compliance with Rule 50(2)(g).
43. The Court, therefore, holds that all the admissibility conditions have been met and that this Application is admissible.
44. In light of the foregoing, the Court dismisses the Respondent State's general objection to the admissibility of the Application.

## **VII. MERITS**

45. The Applicant alleges 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. Taking into consideration his submissions, the Court considers that the main issue in this Application is actually 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. Therefore, the Court will

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<sup>16</sup> *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 52; *Thomas v. Tanzania*, *ibid*, § 74; *Deogratius Nicolaus Jeshi v. United Republic of Tanzania*, ACtHPR, Application 017/2016, Judgment of 13 February 2024 (merits and reparations), § 58.

consider this allegation first, before assessing the alleged violations of Articles 3(2) and 5 of the Charter.

**A. Alleged violation of the right to have one's cause heard**

46. The Court observes, from the record, that the Applicant raises two grievances against the domestic courts whose actions or omissions he claims violated his rights. These grievances are:

- i. That the trial court and appellate courts erred in law and in fact to convict the Applicant based on improbable and implausible evidence of a single witness and other contradictory and inconsistent evidence.
- ii. That the trial court and appellate courts erred in law and in fact in failing to consider the evidence in his defence.

47. The Court will proceed to examine these two grievances in light of Article 7(1) of the Charter.

**i. Allegation relating to the evidence upon which the conviction was based**

48. The Applicant alleges that the Respondent State's courts erred in convicting him based on the evidence of a single witness. Firstly, the Applicant contends that the claim of the victim that she was with him on the date and at the scene of the incident is improbable, as there were no other witnesses who were called to testify in the trial court to corroborate her claim. According to the Applicant, it is usual for a hotel to have several people, including servants and guards. The fact that the court acted upon a statement of the hotel manager that confirmed the victim's statement was an error.

49. The Applicant further argues that the evidence of the victim was not credible as the victim alleged that she was a virgin prior to the rape and that she was bleeding after the rape. However, this point was not corroborated by the testimony of witness PW2, who is the mother of the victim, nor by

witness PW3, who is the uncle of the victim, as among the people she claims she ran to after the rape, neither was any medical report tendered to corroborate the allegation.

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50. On its part, the Respondent State submits that it proved its case beyond reasonable doubt to the satisfaction of the Court of Appeal, which duly considered the evidence. Furthermore, the Respondent State notes that the Court of Appeal held with regard to the Applicant's application for review: "In view of what has traversed above, we are of the settled position that, the applicant in this application has failed to sufficiently demonstrate before us that, there is any error apparent on the face of the record that calls for us to review. Consequently, we are constrained to dismiss the application for want of merit."<sup>17</sup>

51. The Respondent States submits that the Applicant was duly accorded all of his rights.

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52. Article 7(1) provides that "[e]very individual shall have the right to have his cause heard."

53. The Court 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 particularities of evidence used in domestic proceedings.<sup>18</sup>

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<sup>17</sup> *Edison Simon Mwombeki v. Republic*, Court of Appeal of Tanzania, at Mwanza, Criminal Application No. 6/08 of 2017, Judgment of 9 July 2018, page 8.

<sup>18</sup> *Kijiji Isiaga v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 218, § 65.



54. The above notwithstanding, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the conduct of proceedings as well as the assessment of the evidence, was done in consonance with international human rights standards.
55. In the instant case, the Applicant is alleging that his conviction was based on a single witness testimony, and, that the victim's testimony was not credible.
56. The Court reiterates, that in criminal proceedings the conviction of individuals for a crime shall be with certitude, and that "...fair trial requires the imposition of a sentence in a criminal offence, and in particular a heavy prison sentence, shall be based on a strong and credible evidence. That is the purport of the right to the presumption of innocence also enshrined in Article 7 of the Charter".<sup>19</sup>
57. On the matter that conviction was based on a single witness testimony, the Court recalls its previous position that a "judge should in principle not convict on the basis of a single witness, but he may exceptionally do so only if all the possibilities of mistaken identity are eliminated and unless the testimony is absolutely unassailable."<sup>20</sup>
58. The Court observes from the record that when the trial was conducted, six prosecution witnesses were summoned to prove the case. Five prosecution witnesses, that is, PW2, PW3, PW4, PW5 and PW6, were presented with a view of corroborating the victim's (PW1) allegation and the judgment was reached on the basis of such evidence of the victim and the other prosecution witnesses.<sup>21</sup>

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<sup>19</sup> *Mohamed Aboubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §174

<sup>20</sup> *Ibid*, § 175.

<sup>21</sup> *Edison Simon Mwombeki v. Republic*, High Court of Tanzania, at Mwanza, Criminal Appeal No. 119 of 2015, Judgement of 14 December 2015, page 13.

59. The record, further, shows that the Applicant raised the same objection he puts before this Court as one among the grounds of appeal before the High Court, and that the High Court took time to consider and ascertain the evidence of the victim and the other five prosecution witnesses and was convinced by the victim's testimony and by the prosecution witnesses, in particular those of PW3 and PW6.<sup>22</sup>
60. The Court also notes that further on appeal, the Court of Appeal assessed and confirmed the credibility of the evidence of PW1, notwithstanding the absence of medical evidence, and found that the charge of rape was proved against the Applicant beyond reasonable doubt.<sup>23</sup>
61. Accordingly, the Court considers that the manner in which the proceedings before the domestic courts were conducted revealed no manifest errors requiring this Court's intervention. The Court, therefore, dismisses the Applicant's allegation and holds that the Respondent State has not violated his right to be heard, protected under Article 7(1) of the Charter.

**ii. Allegation relating to non-consideration of the evidence in the defence of the Applicant**

62. The Applicant faults the Respondent State for not considering the evidence in his defence, especially his claim that at the time of his arrest he was treated inhumanely and tortured.

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63. The Respondent State submits that the Court of Appeal duly considered the evidence and was satisfied that the offence of rape was proven beyond reasonable doubt, and, further submits that, the Applicant was duly accorded respect of all of his rights.

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Edison Simon Mwombeki v. Republic*, Court of Appeal of Tanzania, at Mwanza, Criminal Appeal No. 94 of 2016, Judgment of 18 October 2016, page 15 – 17.

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64. The Court notes that the Applicant does 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 led to any serious miscarriage of justice, or led to a violation of the Applicant's right to be heard. The Court further notes that the Court of Appeal addressed his defence of alibi.<sup>24</sup> The Court also takes into consideration that nowhere in the record, including in the Applicant's own grounds of appeal before the domestic courts, is any reference made to the allegation that at the time of his arrest he was treated inhumanely and tortured.
65. In view of this, the Court finds that the Respondent State did not violate the Applicant's right to be heard, protected under Article 7(1) of the Charter.

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

66. The Applicant also alleges that the Respondent State violated his rights as guaranteed in Article 3(2) of the Charter.

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67. The Respondent State contends that it did not violate the provisions of Article 3(2) of the Charter. The Respondent State asserts that it had proved its case to the satisfaction of the Court of Appeal and adduced all the evidence necessary to convict the Applicant.

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<sup>24</sup> *Edison Simon Mwombeki v. Republic*, Court of Appeal of Tanzania, at Mwanza, Criminal Appeal No. 94 of 2016, Judgment of 18 October 2016, page 23 – 24.

68. The Court recalls that the burden of proof for a human rights violation lies with the Applicant, unless the Court decides otherwise.<sup>25</sup> In the instant matter, the Court observes that the Applicant alleges that the Respondent State violated his right to equal protection of the law protected under Article 3(2) of the Charter, without expounding the basis thereof. The Court further notes that the Applicant was able to make use of all the legal remedies available to him and that he was able to defend himself in accordance with the protections provided by law.

69. In these circumstances, the Court finds that the Applicant has failed to prove the alleged violation and holds that the Respondent State did not violate his right to equal protection of the law protected under Article 3(2) of the Charter.

### **C. Alleged violation of the right to dignity**

70. The Applicant alleges that upon his arrest he was treated inhumanely and was tortured, in violation of his right to dignity protected under Article 5 of the Charter.

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71. The Respondent State contends that it did not violate the Applicant's right to dignity and submits that the Applicant should be put to strict proof thereof. The Respondent State avers that the Applicant was accorded all of his rights.

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72. The Court reiterates, as earlier stated, that the burden of proof of a human rights violation lies with the Applicant, unless otherwise decided by the Court. In the instant Application, the Applicant claims that the Respondent State violated his rights to dignity, protected under Article 5 of the Charter, as he

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<sup>25</sup> *Sijaona Chacha Machera 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.

was allegedly treated inhumanely and was tortured upon his arrest but does not provide any evidence to substantiate this claim.

73. In these circumstances, the Court finds that the Applicant has failed to prove the alleged violation and holds that the Respondent State did not violate his right to dignity, guaranteed in Article 5 of the Charter.

## **VIII. REPARATIONS**

74. The Court notes that Article 27(1) of the Protocol stipulates that “[i]f 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.”

75. Having found that the Respondent State has not violated any of the Applicant’s rights, the Court dismisses the Applicant’s prayers for reparations.

## **IX. COSTS**

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

77. The Respondent State prays that costs be borne by the Applicant.

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78. The Court notes that Rule 32(2)<sup>26</sup> of the Rules of Court provides that: “unless otherwise decided by the Court, each party shall bear its own costs, if any”.

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<sup>26</sup> Rule 30(2) of the Rules of Court, 2 June 2010.

79. The Court notes that in the instant case, there is no reason to depart from this principle. Accordingly, the Court decides that each party shall bear its own costs.

## **X. OPERATIVE PART**

80. For these reasons:

THE COURT,

*Unanimously,*

*On jurisdiction*

- i. *Dismisses* the objection to its 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 be heard under Article 7(1) of the Charter regarding the allegations that the evidence upon which the conviction was based was not properly examined and evaluated;
- 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 in respect of the unsubstantiated allegation by the Applicant to that effect;

- vii. *Holds* that the Respondent State did not violate the Applicant's right to dignity, under Article 5 of the Charter in relation to his allegation that upon his arrest he was treated inhumanely.

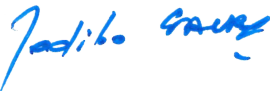
*On reparations*


- viii. *Dismisses* the prayers for reparations.


*On costs*


- ix. *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.



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.

