

**BONIFANCE ALISTEDES V. UNITED REPUBLIC OF TANZANIA**  
**APPLICATION NO. 025/2018**  
**JUDGMENT ON MERITS AND REPARATIONS**

**5 FEBRUARY 2025**

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

**ARUSHA, 5 February 2025:** The African Court on Human and Peoples' Rights (the Court), today delivered a judgment in the case of Bonifance Alistedes v. United Republic of Tanzania.

Bonifance Alistedes (the Applicant), is a national of the United Republic of Tanzania (the Respondent State). He alleged the violation of his rights protected under Articles 1, 2, 3(1), 7(1)(b) and 27(1) of the African Charter on Human and Peoples' Rights (the Charter) in the course of proceedings before domestic courts. In a preliminary examination of the Application, the Court decided that although the Applicant made the above allegations, his claims relate only to the violation of Article 7 of the Charter on the right to a fair trial with respect firstly, to him not being provided with free legal assistance throughout the proceedings before the domestic courts; and secondly, to his conviction and sentence being premised on a charge that was not proven beyond a reasonable doubt and was not in conformity with international law standards. The Applicant sought reparations to redress these alleged violations.

In accordance with Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol), the Court observed that, although there was no objection in this regard, it was obligated to preliminarily, determine whether it had jurisdiction to hear the Application. Accordingly, the Court found that it had personal jurisdiction since the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol which allows individuals to file applications. The Court underscored that, as per its case-law, the Respondent State's withdrawal of the said

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Declaration on 21 November 2019 did not affect this Application, as the withdrawal took effect on 22 November 2020, which is after the Application had been filed at the Court, on 6 June 2018.

The Court held that it had material jurisdiction because the Applicant had alleged violations of his rights, protected under the Charter. Furthermore, the Court held that it had temporal jurisdiction as the alleged violations occurred after the Respondent State had become a party to the Protocol. Lastly, it found that it had territorial jurisdiction, given that the facts of the matter occurred within the territory of the Respondent State.

On admissibility, the Court observed that pursuant to Article 6(2) of the Protocol, the provisions of which are restated in Rule 50(1) of its Rules of Procedure (the Rules), it must make a finding on the admissibility of applications brought before it. In this regard, it noted that the Respondent State raised an objection on exhaustion of local remedies with respect to the Applicant not utilizing the review mechanisms within the domestic judicial system and therefore surmised that the Applicant had not exercised his right to pursue all available legal avenues. The Court held that domestic remedies were exhausted when the Court of Appeal, the highest judicial organ of the Respondent State, determined the Applicant's appeal in a judgment dated 15 June 2016. The Court therefore dismissed the Respondent State's objection.

The Court further considered whether the Application complied with all the admissibility requirements set out under Article 56 of the Charter and as restated in Rule 50 of the Rules. Having examined the record, the Court found that the Application met the requirements set out under Rules 50(2)(a); 50(2)(b); 50(2)(c); 50(2)(d) and; 50(2)(g) of the Rules.

In considering whether the Application met the requirement of being filed within a reasonable time after exhaustion of local remedies as provided under Rule 50(2)(f) of the Rules, the Court first held that, within the Respondent State's judicial system, the procedure for the Court of Appeal to review its decision is an extraordinary

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remedy which applicants are not required to exhaust. The Court consequently held that the period of five (5) months and twenty-eight (28) that it took the Applicant to file his Application is manifestly reasonable. In view of these findings, the Court held that the Application had met all admissibility requirements and declared it admissible.

On the merits, with regard to the right to a fair trial with respect to providing the Applicant with free legal assistance, the Court recalled its jurisprudence that a Respondent State must systematically provide free legal assistance to any applicant charged with a serious criminal offence without the accused having to ask for it, in instances where the person does not have the means to afford the services of a lawyer and whenever the interests of justice so require. The Court further reiterated its case-law that the Respondent State's defence that free legal representation is availed depending on available resources is unjustifiable.

In this Application, the Court considered the serious nature of the offence of rape and the severity of the penalty that such an offence attracts under the law. It further took into account the fact that the Applicant was a lay man with limited knowledge of the law and concluded that he should have been provided with legal assistance, particularly when one has to consider the kind of evidence that should ordinarily be adduced to defend oneself against the offence of rape. In view of the above, the Court held that the Respondent State violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the International Covenant on Civil and Political Rights owing to its failure to provide the Applicant with legal aid throughout his trial.

On the allegation that the Respondent State convicted and sentenced him to 30 years imprisonment on the basis of a charge that had not been proved beyond a reasonable doubt and was not in conformity with international law standards, the Court recalled its jurisprudence that a fair trial requires that where a person faces a heavy prison sentence, the determination of guilt and the conviction must be based on strong and credible evidence. In this Application, the Court noted that both the High Court and Court of Appeal considered the evidence presented to which they applied both the law and extensive case law on the use of circumstantial evidence for the offence of rape. Furthermore, both courts considered the Applicant's defence

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and his demeanor, the medical examination form of the victim, took into account the testimony of the witnesses, considered the birth of the child who was given the Applicant's surname, considered the Applicant's failure to cross examine the witnesses and arrived at the conclusion that the prosecution proved its case beyond reasonable doubt.

In view of the circumstances, the Court held that it did not find any reason to intervene as there is no evidence that the manner in which the domestic courts conducted their proceedings led to a miscarriage of justice or manifest error. It therefore held that the Respondent State did not violate the Applicant's right to a fair trial as enshrined in Article 7(1)(c) of the Charter regarding the conviction and sentencing of the Applicant.

On reparations, in accordance with Article 27(1) of the Protocol, the Court, based on its case-law, dismissed the Applicant's prayer for lack of supporting evidence.

On moral prejudice, the Court observed that it had already established that the Applicant's right to a fair trial had been violated by the Respondent States through its failure to provide him with free legal assistance to pursue his case before the domestic courts. The Court therefore, awarded the Applicant the sum of Three Hundred Thousand Tanzania Shillings (TZS 300,000) as moral damages. Regarding the prayer for reparations for his indirect victims, the Court noted that the Applicant had failed to adduce documentary proof to show filiation such as marriage or birth certificates for his dependents or any equivalent proof, nor had he provided evidence of the material prejudice claimed, such as receipts. The Court thus dismissed his prayer in this regard.

Regarding his prayer for release, the Court the recalled its jurisprudence that such prayers may be granted in circumstances where the findings in this Court's judgment impact the domestic proceedings it noted that the violations established in the present judgment did not impact on the Applicant's guilt, conviction and sentencing, therefore dismissed the prayer. Similarly, the prayer for guarantees of non-repetition was dismissed. Considering that provisions of domestic law on legal aid had not been fully brought in line with international law as directed by the Court in previous

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cases involving the Respondent State, the Court found it appropriate to order publication of this judgment within a period of three months from the date of notification. It also ordered the Respondent State to report to it every six months until the orders made in this judgment are fully implemented.

The Court ordered each Party to bear the costs of the Application.

### **For further information:**

Further information on this case, including the entire text of the African Court's judgment, is available on the website:

<https://www.african-court.org/cpmt/details-case/0252018>

For all other enquiries, please contact the Registry by e-mail at [registrar@african-court.org](mailto:registrar@african-court.org).

*The African Court on Human and Peoples' Rights is a continental Court established by African countries to protect Human and Peoples' Rights in Africa. The Court has jurisdiction over all cases and disputes brought before it, concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant Human Rights Instrument ratified by the*

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