

LADISLAUS CHALULA V. UNITED REPUBLIC OF TANZANIA

APPLICATION No. 003/2018

JUDGMENT ON THE MERITS AND REPARATIONS

5 FEBRUARY 2025

A DECISION BY THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 5 February 2025: the African Court on Human and Peoples' Rights (the Court) has delivered a judgment in the case of *Ladislau Chalula v. United Republic of Tanzania*.

Ladislau CHALULA (the Applicant) is a Tanzanian national. At the time the Application was filed, he was incarcerated in Uyui Central Prison (Tabora) awaiting execution of the death sentence imposed for murder on him on 31 March 1991. In the proceedings before the Court, he alleged violation of his rights in the proceedings before the domestic courts. He sought reparations for the harm suffered as a result of those violations.

The case file shows that the Applicant was convicted of murder and sentenced to death by the High Court of Tanzania sitting in Sumbawanga, in the Rukwa region. The Applicant appealed this decision to the Mbeya Court of Appeal, which dismissed his appeal on 10 June 1999.

In his Application, the Applicant alleged that the Respondent State violated his rights guaranteed in Articles 2, 3(1) and (2), 4, 7(1)(c) of the Charter.

The Respondent State raised an objection to the Court's material jurisdiction on the ground that the Application requests the Court to review matters already decided by domestic courts. The Court noted that it would not be acting as an appellate court if it examined the Applicant's allegations insofar as they related to the assessment of the

evidence on which the domestic courts relied to convict the Applicant. Accordingly, it dismissed the objection.

With regard to the Respondent State's objection to the Court setting aside the conviction and sentence imposed on the Applicant in accordance with the applicable laws of the Respondent State, the Court found it has jurisdiction to quash the conviction and sentence imposed on the Applicant where the conditions are met. It therefore dismissed the second part of the objection raised in this regard.

The Respondent State also challenged the Court's temporal jurisdiction on the grounds that the violations alleged by the Applicants were not continuous. The Court found, in line with its jurisprudence, that the Applicant alleged violations of the Charter that occurred in 1991 and 1999, that is, after the Respondent State became a party to the Charter on 21 October 1986 and before it became a party to the Protocol on 29 March 2010.

The Court also noted that the alleged violations continued after 1999. In the light of the foregoing, the Court rejected the objection and considered that it had temporal jurisdiction to hear the Application.

The Respondent State did not contest the other aspects of the Court's jurisdiction. Nonetheless, the Court examined them and established that it had personal and territorial jurisdiction to hear the Application.

With regard to the admissibility of the Application, the Respondent State raised two objections to the admissibility of the Application, one relating to the non-exhaustion of local remedies and the other to failure to file the Application within a reasonable time.

On the first objection, the Respondent State contended that the avenue to pursue the constitutional remedy guaranteeing fundamental rights was open to the Applicant. In this respect, the Court considered that exhaustion of the said remedy as provided for in the judicial system of the Respondent State was not mandatory and that the Applicant exhausted local remedies insofar as he seized the Court of Appeal, the

highest judicial body of the Respondent State. On the second objection, the Court found that the Application was filed within a reasonable time given that the Applicant is on death row and therefore isolated from the general population and only had limited access to information. The Court also took into account the fact that the Applicant was already on death row before the early years of the Court's activity such that it could not be assumed that he was familiar with the Court and its procedures.

On the other admissibility requirements, the Court found that the Applicant's allegations sought to protect his rights guaranteed by Article 3(h) of the Constitutive Act of the African Union and that the Application was therefore compatible with Rule 50(2)(b) of the Rules of Court. In addition, the Court found that the Application is drafted in language that is neither disparaging nor insulting to the Respondent State or its institutions, so that it is compliant with Rule 50(2)(c) of the Rules. The Court also found that the Application was not based exclusively on news disseminated through the mass media, in accordance with Rule 50(2)(d) of the Rules.

The Court then examined the alleged violations of Articles 2, 3(1) and (2), 4 and 7(1) of the Charter.

On the alleged violation of Article 2 of the Charter, the Court observed that there was no evidence on record that the domestic courts discriminated against the Applicant in the proceedings against him. It therefore dismissed the allegation.

With regard to the allegation that the Respondent State violated the Applicant's right to full equality before the law and equal protection of the law, guaranteed by Article 3 of the Charter, the Court observed that, in the present case, the Applicant provided no evidence in support of his allegation. Noting further that there was nothing on record to suggest that the domestic courts violated the Applicant's right to be protected by the law or his right to equality before the law, the Court rejected the allegation that the domestic courts violated the Applicant's right to be protected by the law or his right to equality before the law.

With regard to the alleged violation of the Applicant's right to life, the Court recalled its constant jurisprudence that the mandatory nature of the death penalty constitutes a violation of the right to life protected by Article 4 of the Charter. It therefore found that the Respondent State violated the applicant's right to life.

As regards the violation of the Applicant's right to dignity protected by Article 5 of the Charter, the Court noted that the Applicant did not expressly allege this violation or raise the issue of the execution of the death sentence by hanging.

However, noting that the Applicant was sentenced to death by hanging and, recalling its constant jurisprudence that the use of hanging as a means of enforcing the mandatory death penalty is a violation of the right to dignity, the Court found that the Respondent State violated the right to dignity in the present case.

With regard to the alleged violation of the Applicant's right to a fair trial, the Court found that an assessment of the evidence relied on by the domestic courts did not reveal any manifest error that would require its intervention. It therefore rejected the allegation and held that the Respondent State did not violate the Applicant's right to have his case heard.

As regards reparations, the Applicant prayed the Court to award him damages for the violations he had suffered, to set aside the conviction and sentence imposed on him and to order his release. For its part, the Respondent State prayed the Court to dismiss the Applicant's request for reparations.

As regards pecuniary reparation, the Court noted that the violations found caused the Applicant moral prejudice. Consequently, in the exercise of its discretion, it awarded the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian shillings as fair compensation.

With regard to non-pecuniary reparation, the Court, having regard to the violation of the right to life owing to the imposition of the mandatory death penalty, ordered the

Respondent State to annul the death sentence imposed on the Applicant and remove him from death row.

As regards the request for release, the Court considered that the nature of the violation in the present case did not reveal any circumstances that would make the Applicant's continued detention a denial of justice or an arbitrary decision. The Court is also of the view that the Applicant did not demonstrate the existence of other exceptional and compelling circumstances warranting the release order. Consequently, the Court dismissed the Applicant's request for an order quashing his conviction and setting him free.

In addition, the Court ordered the Respondent State to take all necessary measures to hold a sentencing hearing for the Applicant in a procedure that does not provide for the mandatory death penalty and that respects the judge's discretion as to the sentence to be imposed.

The Court also held that its judgment should be published within three months of the date of notification.

Finally, the Court ordered the Respondent State to submit to it, within six months of the date of notification of the judgment, a report on the measures taken to implement the measures ordered by the Court.

The Court decided that each Party shall bear its own costs.

In accordance with the applicable provisions of the Protocol and Rules of Court, Judge Rafaâ BEN ACHOUR delivered a separate opinion, while Judges Blaise TCHIKAYA and Dumisa B. NTSEBEZA issued declarations.

Further information

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

<https://www.african-court.org/cpmt/details-case/0032018>

For all other enquiries, please contact the Registry by e-mail at registrar@african-court.org .

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