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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

BONIFANCE ALISTEDES

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 025/2018

JUDGMENT

5 FEBRUARY 2025

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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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:

BONIFANCE ALISTEDES

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr Clement Mashamba, Solicitor General, Office of the Solicitor General;
ii. Dr Ally Possi, Deputy Solicitor General, Office of the Solicitor General;
iii. Mr Vincent Tango, Ag. Director, Civil Litigation, Office of the Solicitor General;
iv. Ms Caroline Kitana Chipeta, Ag. Director, Legal Unit, Ministry of Foreign Affairs and East African Cooperation;
v. Ms Alesia A. Mbuya, Ag. Director, Constitutional, Human Rights and Election petitions; Office of the Solicitor General; and
vi. Ms Jacqueline Kinyasi, State Attorney, Office of the Solicitor General

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

after deliberation,

Renders this Judgment:

I. THE PARTIES

1. Mr. Bonifance Alistedes[2] (herein after referred to as the "Applicant") is a national of Tanzania, who at the time of filing the Application was imprisoned at Butimba Central Prison, Mwanza, having been tried and convicted of the offence of rape. The Applicant alleges violation of his right to a fair trial in relation to proceedings before domestic 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.[3]

[2] The name of the Applicant is spelt differently in the various records on file. The Applicant in his Application, Response to the Respondent States Reply and submission on Reparations refers to himself as "Bonfance Alistedes," while the Record of Proceedings in the Resident Magistrates Court at Mwanza page 8, refers to him as "Boniface Alistedes".

[3] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that on the 14 September 2013, the Applicant was arrested and charged with the offence of rape[4] of a 17-year-old minor, and sentenced to 30 years in prison by the Magistrates' Court of Mwanza, Tanzania, in Criminal Case No. 19/2014 on the 12 February 2014.

4. Aggrieved with the decision of the Magistrate Court, the Applicant appealed to the High Court of Tanzania at Mwanza, which dismissed his appeal on 13 April 2016. Dissatisfied with the judgment of the High Court, he further appealed to the Court of Appeal at Mwanza, which similarly dismissed his appeal for lack of merit on 13 April 2018, and upheld the conviction and sentence in its entirety.

B. Alleged violations

5. The Applicant alleges the violation of his right to a fair trial on two specific aspects, namely, that:

    i. He was not provided with free legal representation throughout the proceedings before the domestic courts despite the gravity of the offence with which he was charged and the weight of the sentence;
    ii. He was sentenced and convicted for the offence of rape on the basis of evidence which was not proved beyond reasonable doubt.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 11 October 2018 and served on the Respondent State on 18 October 2018.[5]

[4] Contrary to Section 130(1) and (2) (e) and 131(1) of the Penal Code Cap 16, R.E 2002.
[5] In accordance with Rule 35(1) of the Rules of Court of 2010.

7. The Parties filed their pleadings on the merits and reparations after several extensions of time granted by the Court.

8. Pleadings were closed on 30 September 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

9. The Applicant prays the Court to make the following findings and orders:

    i. Find that the Court has jurisdiction to determine the matter;
    ii. Find that the Application has met the admissibility requirements stipulated under Rule 40(5) and (6) of the Rules of the Court;
    iii. Find that the Respondent State has violated Articles 2, 3(1), and 7(c) of the Charter;
    iv. Order the Respondent State to nullify its decision and order his release from prison;
    v. Order the Respondent State to provide reparations for the violations established;
    vi. Order any other relief or remedy as the Court may deem fit.

10. With respect to reparations, the Applicant prays the Court to:

    i. Grant him United States Dollars Eleven Thousand Five Hundred and Twenty (USD 11,520) for the material prejudice suffered since he was arrested and to grant his beneficiaries and indirect victims a total sum of United States Dollars Ninety- Five Thousand (USD 95,000);
    ii. Order the Respondent State to pay him United States Dollars Seventy-Two Thousand (USD 72,000) for moral prejudice suffered, calculated at United States Dollars One Thousand (USD 1,000) per month from the day he was arrested on 14 September 2013 to the date of filing his Application on 3 November 2018;

iii. Order the Respondent State to pay him United States Dollars Seventy-Seven (USD 77,000) for his dependants as indirect victims for moral prejudice suffered.

11. With respect to jurisdiction, admissibility and merits, the Respondent State prays the Court to:

i. Declare that the Court is not vested with jurisdiction to adjudicate on the Application;
ii. Declare that the Application has not met the admissibility requirements provided for under Article 56(5) of the Charter, Article 6(2) of the Protocol and Rule 50(2)(e) of the Rules of Court and it is therefore inadmissible and be duly dismissed;
iii. Declare the Application inadmissible and dismiss it with costs;
iv. Make an order that the Respondent State did not violate the Applicant's human rights provided under Article 3(1)(2), and 7(c) of the Charter;
v. Order that the Respondent State did not violate its obligation under Article 1 of the Charter;
vi. Find that the Applicant was tried and convicted in accordance with the laws of the Respondent State and international human rights standards;
vii. Dismiss the Application for lack of merit;
viii. Dismiss the Applicant's prayers;
ix. Dismiss the Applicant's prayers for reparations; and
x. Order that the costs be borne by the Applicant.

V. JURISDICTION

12. The Court observes that 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.

13. The Court further observes that pursuant to Rule 49(1) of the Rules, it "shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."[6]

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

15. In the present Application, the Court notes that the Respondent State raises an objection 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

16. The Respondent State raises three issues in respect of the Court's material jurisdiction. First, that the Applicant is asking the Court to sit as a Court of first instance and to adjudicate on matters, which were never raised before the national courts.

17. Second, that the Court is being called upon to act as an appellate Court by raising issues of fact and law which have already been determined by the Court of Appeal, which is its highest Court.

18. Lastly, the Respondent State relying on Rule 29 of the Rules of Court and the Court's jurisprudence in the case of *Ernest Francis Mtingwi v. Republic of Malawi*, contends that this Court lacks jurisdiction to quash the conviction, set aside the sentence and order the release of the Applicant from prison as the decision to convict and sentence the Applicant was affirmed by its highest Court.

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[6] Rule 39(1), Rules of Court, 2 June 2010.

19. In response to the Respondent State's objection, the Applicant argues that the Court has jurisdiction in accordance with Article 3(1) of the Protocol and Rule 26(2) of the Rules. He asserts that the Respondent State's objection to the Court's jurisdiction is a "misjudgement or a misinterpretation" of both the Court's authority and the principles enshrined in the Charter. According to him, his Application relates to the violation of his right to a fair trial, resulting in an unfair conviction and sentence of 30 years imprisonment.

20. The Applicant further submits that this Court would not be sitting as an appellate Court if it adjudicated on his Application. With regard to the objection that some of his allegations are being raised for the first time before this Court, the Applicant contends that the said objection relates to the admissibility requirement of exhaustion of local remedies and it is illogical for the Respondent State to raise it in respect to the jurisdiction of the Court.

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21. In relation to the first objection, that the Court is being called to sit as a Court of first instance and to adjudicate on matters, which were never raised before the national courts, the Court recalls that its jurisdiction is established under Article 3 of the Protocol pursuant to which it has competence to consider any application filed before it provided that the Applicant alleges the violation of rights guaranteed in the Charter, the Protocol or any other human rights instruments ratified by the Respondent State.[7] Given that in the present Application, the Applicant alleges violation of Articles 1, 2, 3(1), 7(1)(b) and 27(1) of the Charter, the Court has jurisdiction to hear the Application.

22. Consequently, the objection that the Court would be sitting as a court of first instance is dismissed.

[7] *Daud Sumano Kilagela v. United Republic of Tanzania*, ACtHPR, Application No. 017/2018, Judgment on 3 September 2024 (merits and reparations), § 7.

23. With regard to the second objection that the Court is being called upon to act as an appellate Court to deal with matters already determined by the Court of Appeal, this Court recalls its established case-law that although it is not an appellate body with respect to decisions of national courts,[8] this does not preclude it from examining proceedings of the said courts in order to determine whether they were conducted in accordance with the standards set out in the Charter or any other international human rights instruments ratified by the State concerned.[9] As such, the Court holds that in the present Application, it would not be sitting as an appellate court, if it were to examine the allegations made by the Applicant simply because they relate to the assessment of evidentiary issues.

24. Consequently, the Respondent State's objection in this regard is dismissed.

25. The Court notes that the third objection relates to whether this Court is empowered to quash the conviction, set aside the sentence and order the Applicant's release. In this regard, the Court recalls that Article 27 of the Protocol empowers it to order appropriate remedies when it finds that there is violation of human rights guaranteed by the Charter or any human rights instrument ratified by the Respondent State.[10] The Court further recalls that, as circumstances of the case may require, it has jurisdiction to grant various types of reparations including quashing a conviction, setting aside a sentence and ordering an applicant's release from prison where it finds the latter has demonstrated specific and compelling circumstances warranting such an order.[11] As such, the Court holds that issuing an order for release where the requirements are met is well within its jurisdiction.

26. Consequently, the Court equally dismisses this objection.

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[8] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[9] *Mtingwi v. Malawi*, *ibid*; *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35.
[10] *Habiyalimana Augustino and Muburu Abdulkarim v. United Republic of Tanzania*, ACtHPR, Application No. 015/2016, Judgment on 3 September 2024 (merits and reparations), § 11.
[11] *Nzigiyimana Zabron v. United Republic of Tanzania*, ACtHPR, Application No. 051/2016, Judgment on 4 June 2024 (merits and reparations), § 9.

27. In light of all the above, the Court dismisses the Respondent State's objection to its material jurisdiction and holds that it has material jurisdiction to hear the present Application.

B. Other aspects of jurisdiction

28. The Court notes that the Parties do not contest its personal, temporal and territorial jurisdiction and nothing on record indicates that it lacks jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, the Court must satisfy itself that all aspects of its jurisdiction are met.

29. In relation to its personal jurisdiction, the Court recalls its jurisprudence that the withdrawal of the Declaration does not apply retroactively and only takes effect 12 months after the notice of such withdrawal has been deposited, in this case, on 22 November 2020.[12] This Application having been filed before the said date is thus not affected by the withdrawal. Consequently, the Court holds that it has personal jurisdiction.

30. Regarding its temporal jurisdiction, the Court observes that the alleged violations are based on proceedings arising from the decisions of the domestic courts that is: District Court judgment of 26 June 2015; High Court judgment of 13 April 2016 and Court of Appeal judgment of 15 June 2016, after the Respondent State had become a party to the Protocol. Furthermore, the Applicant remains incarcerated, serving a 30-year sentence that he claims resulted from an unfair trial.[13] Consequently, the Court holds that the alleged violations are continuing in nature, thus conferring it with temporal jurisdiction to scrutinize the related claims.[14]

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[12] *Cheusi v. Tanzania*, *supra*, §§ 37-39.
[13] *Tanganyika Law Society and Legal and Human Rights Centre v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34, § 84; *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, § 65; *Ivan v. Tanzania* (merits and reparations), *supra,* § 29(ii).
[14] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 68; and *Igola Iguna v. United Republic of Tanzania,* ACtHPR*,* Application No. 020/2017, Judgment of 1 December 2022, § 18.

31. With regard to its territorial jurisdiction, the Court holds that it has territorial jurisdiction, as the alleged violations occurred in the territory of the Respondent State.

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

VI. ADMISSIBILITY

33. 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."

34. In line with 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 these Rules."

35. Further, 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.

36. The Respondent State raises an objection to the admissibility of the Application, based on non-exhaustion of local remedies. The Court will, therefore, consider this objection before examining other conditions for admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

37. The Respondent State avers that the Applicant did not exhaust local remedies because its judicial system provides for a mechanism to file a review under Section 66 of the Court of Appeal Rules 2009, particularly in cases alleging violation of rights such as Article 7(c) of the Charter. In view of this, the Respondent State surmises that the Applicant did not exercise his right to pursue available legal avenues.

*

38. In response to this objection, the Applicant asserts that his Application meets the requirement of exhaustion of local remedies. He contends that his case was determined in the Magistrates' Court, the High Court and the Court of Appeal. He avers that the domestic courts should have applied all applicable laws in dealing with matters even where parties failed to refer to them. He emphasises the domestic court's role to apply all other relevant rules and not only restrict itself to relying on rules cited by parties.

39. With regard to the Respondent State's assertion that he did not exercise his right to file a review of the Court of Appeal's judgment, the Applicant submits that he attempted to apply for a review out of time, which has yet to be

heard. According to the Applicant, this demonstrates the procedural complexities and limitations he faced within the domestic legal system, further strengthening his argument that he has exhausted all local remedies.

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40. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are 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 are unavailable, ineffective and insufficient or the domestic proceedings are unduly prolonged.[15] This requirement seeks to ensure that, as the primary duty bearers, States have the opportunity to address human rights violations occurring within their jurisdiction before an international body is called upon to intervene.

41. In its established case-law, the Court has consistently held that in order for this requirement of admissibility to be met, the remedies that should be exhausted must be ordinary judicial remedies.[16] Furthermore, the Court has considered that the review procedure, as it applies in the Respondent State's judicial system, is not a remedy that an Applicant is required to exhaust.[17]

42. In the instant case, the Court notes that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when the said Court rendered its judgment on 15 June 2016.

43. Consequently, the Court dismisses the Respondent State's objection based on the failure to exhaust local remedies.

[15] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 64; *Kennedy Owino Onyachi and Charles Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 56; *Werema and Werema v. Tanzania* (merits), *supra,* § 40.
[16] *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 95.
[17] *Zabron v. Tanzania*, *supra*, § 13.

B. Other admissibility requirements

44. The Court notes that the requirements in sub-rules 50(2)(a), (b), (c), (d), (e) and (g) of the Rules, are not in contention between the Parties. Nevertheless, it must still ascertain that these requirements have been fulfilled.

45. From the records, the Court notes that the Applicant is clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.

46. The Court notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. It further, notes that that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) is the promotion and protection of human and peoples' rights among the objectives of the AU. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the AU and the Charter, and thus, fulfils the requirement of Rule 50(2)(b) of the Rules.

47. The Court further notes that the language used in the Application is neither disparaging nor insulting with regard to the Respondent State, its institutions or the African Union, in compliance with the Rule 50(2)(c) of the Rules.

48. The Court observes that the Application is also not based exclusively on news disseminated through mass media, rather, it is based on judicial decisions from the domestic courts of the Respondent State. Thus, the Court holds that the Application complies with Rule 50(2)(d) of the Rules.

49. With regard to the requirement to file the Application within a reasonable time, Court recalls its jurisprudence that: "…the reasonableness of the time frame for seizure depends on the specific circumstances of the case…".[18] Furthermore, the Court has previously considered relatively short periods of

[18] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Ilboudo v. Republic of Burkina Faso* (merits) (24 June 2014) 1 AfCLR 219, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.

time as manifestly reasonable.[19] In the present case, the Court notes that the period of time to be considered is that of five months and 28 days, which in the circumstances the Court finds manifestly reasonable. The Application therefore meets the requirement prescribed under Rule 50(2)(f) of the Rules.

50. Concerning the admissibility requirement specified in Article 56(7) of the Charter, the Court notes that 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, 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.

51. In view of the above, the Court concludes that the Application meets all the admissibility conditions under Article 56 of the Charter, as restated in Rule 50(2) of the Rules, and therefore, declares it admissible.

VII. MERITS

52. The Court observes that in his Application, the Applicant alleges violation of Articles 1, 2, 3(1), 7(1)(b) and 27(1) of the Charter. However, his claims relate only to the violation of Article 7 on the right to a fair trial. He particularly alleges: (A) that he was not provided with free legal assistance throughout the proceedings before the domestic courts and (B) that his conviction and sentence were premised on a charge that was not proven beyond a reasonable doubt and in non-conformity with international law standards. The Court will now in turn, consider the alleged violations as such.

[19] *Augustine v. Tanzania*, *supra*, § 58.

A. Alleged violation of the right to free legal assistance

53. The Applicant avers that he is an indigent layman who was charged with the "capital offence of rape", but the Respondent State failed to avail him with free legal representation throughout his trial despite the gravity of the offence and weight of the sentence in contravention of Article 7(1)(c) of the Charter

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54. The Respondent State on its part, avers that the Applicant did not request for legal representation during the procedures before the trial court or the appellate court. However, he was provided the opportunity to argue his case and his arguments were considered. Furthermore, had he raised this issue during the trial, it could have been addressed appropriately in accordance with Tanzanian legal aid legislation.

55. The Respondent State submits that the right to legal representation is not absolute but depends upon two conditions, first, that there must be a request for legal representation and second, that the financial resources to hire a legal counsel must be available. It avers that this condition is similar to the Courts provisions in Rule 31 of the Rules of the Court, which states that "Pursuant to Article 10(2) of the Protocol the Court may, in the interest of justice and within the limits of the financial resources available decide, to provide free legal representation and/or legal assistance to any party."

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56. Article 7(1)(c) of the Charter provides that:

> 1. Every individual shall have the right to have his cause heard. This comprises: …
>
> (c) The right to defence, including the right to be defended by counsel of his choice.

57. In relation to free legal assistance, the Court recalls that, as it has previously held, Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR, guarantees the right to automatic free legal aid for any one charged with a serious criminal offence, where the person does not have the means to pay and whenever the interests of justice so require.[20] Furthermore, an accused person charged with serious criminal offences attracting severe penalties is entitled to free legal assistance without having to ask for it.[21] The Court also recalls that that legal assistance is to be provided to indigent persons facing a serious penalty at both trial and appellate stages.[22] Moreover, the Court has previously found unjustifiable the Respondent State's defence that free legal representation is availed depending on available resources.[23]

58. In the instant case, the Court observes from the record of proceedings on file that the Respondent State did not provide the Applicant with free legal representation despite his circumstances, the domestic courts' acknowledgment that he "was a lay man with no knowledge of the law" and the serious nature of the sentence of the offence of rape and the penalty that such offence attracts under the law.[24] Taking into account the aforementioned circumstances, the Court finds that Applicant should have

[20] *Thomas v. Tanzania* (merits), *supra*, § 124.
[21] *Ibid.*
[22] *Chacha Wambura and Mangazi Mkama v. United Republic of Tanzania* ACtHPR, Consolidated Application No. 011/2016 and 012/2016, Judgment on 5 September 2023 (merits and reparations), § 25.
[23] *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 70.
[24] The Respondent State Penal law (Penal Code CAP. 16 [R.E 2022]) provides in Section 131 that:
(1) provides that Any person who commits rape is, except in the cases provided for in the renumbered subsection
(2) liable to be punished with imprisonment for life, and in any case for imprisonment of not less than thirty years with corporal punishment, and with a fine, and shall in addition be ordered to pay compensation of an amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person. Notwithstanding the provisions of any law, where the offence is committed by a boy who is of the age of eighteen years or less, he shall-
(a) if a first offender, be sentenced to corporal punishment only;
(b) if a second time offender, be sentenced to imprisonment for a term of twelve months with corporal punishment;
(c) if a third time and recidivist offender, be sentenced to five years with corporal punishment. Penal Code [CAP. 16 R.E. 2022] 71.
(3) Subject to the provisions of subsection (2), a person who commits an offence of rape of a girl under the age of ten years shall on conviction be sentenced to life.

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.

59. The Court notes that with regard to the provision of legal aid to accused persons under the Respondent State, it revised its Legal Aid Act. In this regard, the Court observes that while the revised Legal Aid Act 2017, provides for legal aid for accused persons upon the certification of the judicial officer, it does not address the issue raised by the Court in its previous judgments[25] that accused persons charged with serious offences carrying heavy sentences should be granted free legal assistance as a matter of course. As such, the Court considers that the Legal Aid Act 2017, is not fully aligned with its case law and the Charter.

60. In view of the above, the Court holds that the Respondent State violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR owing to its failure to provide the Applicant with legal aid throughout his trial.

B. Alleged violation relating to the Applicant's conviction and sentence

61. The Applicant avers that he was convicted and sentenced to 30 years imprisonment on the basis of a charge that had not been proved beyond a reasonable doubt and in non-conformity with international law standards. He further avers that the PF 3 (Medical report) did not provide evidence of the commission of the offence of rape, rather it simply established that the victim was 32 weeks pregnant. He argues that this being the case, a paternity test should have been conducted, particularly since the victim's medical form, stated that the father of the child was "*Boniphace James*" and not "*Boniphace Alistedes*" as reported by the victim.

[25] *Thomas v. Tanzania* (merits)*, supra,* § 159; *Abubakari v. Tanzania* (merits), *supra,* § 236.

62. The Applicant claims that the age of the alleged victim was also not ascertained, instead the court relied on the fictitious testimony of the victim's mother PW1, whose family, he claims, already bore a grudge against his family because the victim's mother, PW1 was upset that her husband had had an affair with his aunt. He avers that this claim was substantiated by his "witnesses 2 and 3".

*

63. The Respondent State avers that these allegations relate to purely evidential matters and that the court that is best suited to consider this is the trial court which had an opportunity to observe the demeanour of the Applicant and witnesses during trial. It asserts that this Court, should not assume the role of a criminal appellate court, a role which is not conferred upon it by the Charter and its Protocol.

64. The Respondent State avers that the trial and appellate courts were satisfied that the offence was committed and that the case was proved beyond reasonable doubt. Regarding the Applicants argument that a paternity test should have been done, it argues that this was not necessary as the offence of rape only requires proof of penetration, which was already proved. The Respondent State argues that the age of the victim being 17 years at the time of the offence was proved through her own testimony and also by her mother. It is also the Respondent State's contention that the arguments advanced by the Applicant are the same as those that he made during the appeal process and should therefore be dismissed for lack of merit, otherwise re-litigating them in this forum renders this Court an appellate criminal Court.

65. The Respondent State further surmises that the mere fact that the medical form contained an anomaly with regard to the identity and name of the father of the child is immaterial because the Applicant was correctly identified by the victim to the satisfaction of the trial court.

66. Addressing the claim of the family feud between the victim and Applicants family, the Respondent State avers that this was a mere afterthought by the Applicant and that if such a feud actually existed, then the Applicant had the opportunity to cross examine the witnesses and victim's mother on this issue, which he did not do. The Respondent State concludes that the charge was proved beyond a reasonable doubt and in accordance with the established standard of proof for the criminal proceeding in the Respondent State. Thus, the allegation that the matter was decided basing on one party's evidence is meritless and should be dismissed by this Court.

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67. The Court observes that the relevant Article relating to the violation alleged by Applicant is Article 7(1)(c) of the Charter provides that:

> 1. Every individual shall have the right to have his cause heard. This comprises: …
>
> (c) the right to defence, including the right to be defended by counsel of his choice…

68. The Court recalls its jurisprudence in the matter of *Mohamed Abubakari v. United Republic of Tanzania*, where it held 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.[26]

69. Furthermore, domestic courts enjoy a wide margin of appreciation in evaluating the probative value of particular evidence. It follows that as an international human rights court, this Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.[27] However, the fact that an allegation raises questions relating to the manner in which evidence was examined by domestic courts does not preclude the Court from determining whether the

[26] *Abubakari v. Tanzania* (merits), *supra*, §§ 191-192.
[27] *Kijiji Isiaga v. United Republic of Tanzania*, (merits) (25 June 2021) 2 AFCLR 218, § 65.

domestic procedures fulfilled international human rights standards. The Court intervenes when there is a manifest error in the assessment of the national Courts that would result in miscarriage of justice.[28]

70. In the instant case, the Court notes that both the High Court and Court of Appeal considered the evidence presented to which they applied both the law and extensive case law[29] on the use of circumstantial evidence for the offence of rape. Furthermore, both courts considered the Applicant's defence and his demeanour, 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, this Court does 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.

71. In the light of the above, the Court holds 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.

VIII. REPARATIONS

72. The Applicant alleges that before his imprisonment, he earned a living as a petty trader dealing in clothes and also had a motor cycling business whose proceeds enabled him to provide for his family. He prays the Court make an order for:

[28] *John Mwita v. United Republic of Tanzania*, ACtHPR, Application No. 044/2016 Judgment of 13 February 2024 (merits and reparations) § 21.
[29] *Hassan Bundala & Swaga v. The Republic,* Criminal Appeal No. 386 of 2015 (unreported); *Nazir Mohamed & Nidi v. The Republic,* Criminal Appeal No. 321 of 2014; *George Mali Kemboga v. The Republic,* Criminal Appeal No. 327 of 2013; *Sadiki Marwa Kisase v. The Republic,* Criminal Appeal No. 83 of 2012 (all unreported); *Damian Ruhele v. The Republic,* Criminal Appeal No. 501 of 2017 (unreported).

i. An amount of USD 72,000 for moral prejudice;
ii. An amount of USD 115,200 for material prejudice;
iii. Non-repetition by the Respondent State;
iv. The Respondent State reports back to Court every six months until implementation of orders is finalised;
v. To set aside both his conviction and sentence; and
vi. The Respondent State to immediately release him from prison.

*

73. The Respondent State did not respond to the Applicants submission on reparations.

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74. 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' rights, it shall make appropriate orders to remedy the violation including the payment of the fair compensation or reparation.

75. The Court considers that, as it has consistently held, for reparations to be granted, the Respondent State should first be internationally responsible of the wrongful act and causation should be established between the wrongful act and the alleged prejudice.[30] Furthermore, and where granted, reparation should cover the full damage suffered; and the Applicant bears the onus of justifying the claims made.[31]

76. In the present Application, the Court has established that the Respondent State has violated the Applicant's right to defence under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR by failing to provide him with free legal assistance during his trial and appeals in the

[30] *XYZ v. Republic of Benin* (reparations) (27 November 2020) 4 AfCLR 49, § 158 and *Sébastien Germain Ajavon v. Republic of Benin* (reparations) (28 November 2019) 3 AfCLR 196, § 17.
[31] *Juma v. Tanzania* (merits and reparations), *supra,* § 141; *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, §§ 20-31; and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, §§ 27-29.

domestic courts. The Court, therefore, finds that the Respondent State's responsibility has been established. The Applicant is consequently entitled to reparations commensurate with the extent of the established violations.

77. The Court notes that the Applicants' prayers relate to both pecuniary and non-pecuniary reparations.

A. Pecuniary reparations

i. Material prejudice

78. In the instant case, the Applicant prays the Court to grant him United States Dollars Eleven Thousand Five Hundred and Twenty (USD 11,520) for the prejudice suffered since he was arrested.

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79. The Court recalls that for it to grant reparations for material prejudice, there must be a causal link between the violation established by the Court and the prejudice caused and there should be a specification of the nature of the prejudice and proof thereof.[32] Further, this Court has held that an Applicant bears the burden of providing evidence to support his/her claims for material prejudice.[33] The Court thus dismisses the prayer of the Applicant and does not grant reparation for material prejudice to the Applicant.

ii. Moral prejudice

80. The Applicant prays that the Court orders the Respondent State to pay him a total amount of United States Dollars Seventy-Two Thousand (USD 72,000) for moral prejudice. The Applicant alleges that the amount is

[32] *Nguza Viking (Babu Seya) and Another v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, § 15 and *Kijiji Isiaga v. Republic of Tanzania*, ACtHPR, Application No. 011/2015, Judgment of 25 June 2021 (reparations), § 20.
[33] *Msuguri v. Tanzania* (merits and reparations), *supra*, § 122; *Elisamehe v. Tanzania* (merits and reparations), *supra*, § 97 and *Guehi v. Tanzania* (merits and reparations), *supra*, § 15.

calculated at United States Dollars One Thousand (USD 1,000) per month from the day he was arrested on 14 September 2013 to the date of filing his Application on 3 November 2018. The Applicant also prays that the Court orders the Respondent State to pay him United States Dollars, Seventy-Seven (USD 77,000) for his dependants as indirect victims for moral prejudice suffered.

81. Furthermore, he prays the Court to order the Respondent State to pay his dependants as indirect victims, a total amount of United States Dollars Ninety-Five Thousand (95,000) as per the following breakdown:

    i. An amount of twenty thousand dollars (USD 20,000) to his son Rweumbiza Bonfance;
    ii. An amount of thirty thousand dollars (USD 30,000), to his wife Farida Hussein;
    iii. An amount of fifteen thousand dollars (USD 15,000) to his mother Devina Sililo;
    iv. An amount of fifteen thousand dollars (USD 15,000) to his father Alistedes Benedicto;
    v. An amount of fifteen thousand dollars (USD 15,000), to his sister Asimwe Alistedes.

*

82. The Court notes that moral prejudice is that which results from suffering, anguish and from changes in the living conditions for the victim and his family as a result of a human rights violation.[34] In this regard, the Court restates, its jurisprudence, that prejudice is assumed in cases of human rights violations and the assessment of the amount to be awarded must be undertaken in fairness taking into account the circumstances of the case.

[34] *Mtikila v. Tanzania* (reparations), *supra*, § 34; *Cheusi v. Tanzania* (judgment), *supra*, § 150 and *Viking and Another v. Tanzania* (reparations), *supra*, § 38; *Kilagela v. Tanzania*, *supra*, § 22.

83. As already established in this judgment, the Applicant's right to a fair trial has been violated by the Respondent States failure to provide him with free legal assistance to pursue his case before the domestic courts.

84. In light of the foregoing, the Court holds that the Applicant is entitled to moral damages as there is a presumption that he has suffered some form of moral prejudice as a result of the above-mentioned violation. The Court has held that the assessment of quantum damages in cases of moral prejudice must be done in fairness while taking into account the circumstances of the case.[35] The practice of the Court, in such instances, is to award lump sums for moral loss.[36]

85. In view of all of the above, the Court awards the Applicant the sum of Three Hundred Thousand Tanzania Shillings (TZS 300,000) as moral damages.

86. Regarding the prayer for reparations for his indirect victims, the Court notes that the Applicant has failed to adduce documentary proof to show filiation such as marriage or birth certificates for his dependants or any equivalent proof,[37] nor has he provided evidence of the material prejudice claimed, such as receipts. The Court thus dismisses the prayer of the Applicant in this regard.

B. Non-pecuniary reparations

i. Prayer to set aside the conviction and sentence, and for release

87. The Applicant prays the Court to set aside his conviction and sentence; and order his release from prison.

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[35] *Juma v. Tanzania* (judgment), *supra*, § 144; *Viking and Another v. Tanzania* (reparations), *supra*, § 41 and *Umuhoza v. Rwanda* (reparations), *supra*, § 59.
[36] *Zongo and Others v. Burkina Faso* (reparations), *supra*, §§ 61-62 and *Guehi v. Tanzania* (merits and reparations), *supra*, § 177.
[37] *Abubakari v. Tanzania* (reparations), § 60; *Thomas v. Tanzania* (reparations), § 50; *Onyango v. Tanzania* (reparations), *supra*, § 71; *Zongo and Others v. Burkina Faso* (reparations), § 54; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 135; and *Léon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, § 148.

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88. Regarding the prayer that the conviction and sentence should be set aside, the Court recalls its jurisprudence that such prayers may be granted in circumstances where the findings in this Court's judgment impact the domestic proceedings. The Court notes that the violations established in the present judgment do not impact on the Applicant's guilt, conviction and sentencing.

89. Consequently, the prayer for the Applicant's conviction and sentence to be set aside is dismissed.

90. With respect to the prayer for release, the Court recalls that as it has held in *Gozbert Henerico v. United Republic of Tanzania*:

> The Court can only order a release if an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction are based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice.[38]

91. In the present Judgment, the Court did not make any finding to the effect that the Applicant's arrest and conviction were arbitrary or led to any miscarriage of justice. As a consequence, the prayer for release is dismissed.

ii. Guarantees of non-repetition

92. The Applicant prays the Court to order the Respondent State to guarantee non-repetition of the violation against him.

[38] *Henerico v. Tanzania* (merits and reparations), *supra,* § 202; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84; *Minani Evarist v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 402, § 82 and *Juma v. Tanzania* (judgment)*, supra,* § 165.

***

93. The Court observes that the Applicant seeks reparations for guarantees of non-repetition of the violations in relation to his individual case. This Court has previously observed that such measures are usually aimed at eradicating structural and systemic human rights violations. However, such remedies can also be relevant to individual cases, where there is evidence that the violation will not cease or is likely to occur again. Such cases include when the Respondent State has challenged, or failed to comply with earlier findings and orders of the Court.[39]

94. The Court notes that the Applicant does not substantiate this prayer. Furthermore, there is no evidence on file that the violation found will not cease, is likely to occur again regarding the Applicant and there had been no previous finding or order in respect of the present Application. Besides, findings of the Court in this judgment sufficiently address the violation established.

95. Consequently, the prayer for the guarantee of non-repetition regarding the Applicant is dismissed.

96. Having stated that, the relevance of guaranteeing non repetition regarding provision of legal aid extends beyond the individual situation of the Applicant as arises in the present Application. In this regard, the Court recalls that it had previously found violation regarding the right to free legal assistance. It had observed that the Respondent State's Legal Aid Act 2017 is not fully aligned with its previous judgments and the Charter in respect of the right to free legal assistance.[40] The Court therefore deems it necessary to make an order in this regard, and thus Orders the Respondent State to take all constitutive and legislative measures to amend the Legal Aid Act 2017 in order to fully align it with the Respondent State's international obligations as reflected in the Charter and ICCPR.

[39] See *Mtikila v. Tanzania* (reparations), *supra,* § 43.
[40] See § 87 above.

iii. Publication of the judgment

97. None of the Parties makes any submissions in respect of the publication of this judgment.

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98. 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.[41] This is owing to the fact that the current state of law in the Respondent State still poses a threat to the full and effective provision of legal aid in accordance with international human rights law as earlier recalled in this judgment.

99. The Court thus finds it appropriate to order publication of this judgment within a period of three months from the date of notification.

iv. Implementation and reporting

100. The Applicant prays the Court to Order the Respondent State to report to Court, every six months until the judgment is fully implemented.

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101. The Court recalls that, pursuant to Article 30 of the Protocol, orders on reporting on implementation have become part of its processes.[42] The present Application is no exception and the Court deems it necessary to order the Respondent State to report to it every six months until the orders made in this judgement are fully implemented.

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[41] *Gerald Koroso Kalonge v. United Republic of Tanzania*, ACtHPR, Application No. 024/2018, Judgment of 13 November 2024 (merits and reparations), §§ 155-157.
[42] *Legal and Human Rights Centre and another v. Tanzania*, Judgment, *supra*, § 182; *Habyalimana Augustino v. Tanzania*, ACtHPR, *supra*, § 249.

IX. COSTS

102. Each Party prays the Court to order that the other Party to bear the costs of the Application.

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103. The Court observes that Rule 32(2) of the Rules provides that: “Unless otherwise decided by the Court, each party shall bear its own costs, if any.”

104. In the instant case, the Court notes that proceedings before it are free of charge. Furthermore, none of the Parties provide evidence to support their prayer as to costs. In the circumstances, this Court does not find any justification to depart from the above provisions, and therefore rules that each Party shall bear its own costs.

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X. OPERATIVE PART

105. For these reasons:

THE COURT,

On jurisdiction

Unanimously,

i. *Dismisses* the objection to its material jurisdiction;
ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objection on exhaustion local remedies;

iv. *Declares* the Application admissible.

On merits

v. *Holds* that the Respondent State did not violate the Applicant's right to a fair trial guaranteed under Article 7(1)(c) regarding his conviction and sentencing on the basis on evidence not proved beyond a reasonable doubt;
vi. *Holds* that the Respondent State violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR with regard to its failure to provide free legal representation to the Applicant.

On reparations

Pecuniary reparations

vii. *Dismisses* the Applicants' prayers for material damages;
viii. *Dismisses* the Applicants' prayers for pecuniary reparations for his dependants as indirect victims;
ix. *Grants* the Applicant's prayer for reparations in respect of the moral prejudice as a result of the violation established and awards him the sum of Tanzanian Shilling Three Hundred Thousand (TZS 300,000);
x. *Orders* the Respondent State to pay the sum awarded under (ix) above, free from tax, as fair compensation 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.

Non-pecuniary reparations

xi. *Dismisses* the Applicant's prayers to set aside his conviction, and sentence; and order his release;

xii. *Orders* the Respondent State to take all necessary constitutive and legislative measures, within a reasonable time, and in any case not exceeding two years, to ensure that the Legal Aid Act 2017, is amended and fully aligned with the provisions of the Charter and ICCPR.

On publication of the judgment

xiii. *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.

On implementation and reporting

xiv. *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 orders set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

xv. *Decides 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 Fifth Day of February in the Year Two Thousand and Twenty-Five in English and French, the English text being authoritative.