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

THE MATTER OF

MOSES AMOS MWAKASINDILE

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 045/2019

JUDGMENT

6 MARCH 2026

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The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges, and Grace W. KAKAI, Deputy 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, Judge of the Court, and a national of Tanzania, did not hear the Application.

In the matter of

Moses Amos MWAKASINDILE

Represented by:

Edwin Alon HANS
Advocate, Hans & Co Advocates.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

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

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

I. THE PARTIES

1. Moses Amos Mwakasindile is a Tanzanian national. At the time of filing this Application, he was serving a sentence of life imprisonment after having been tried and convicted of the offence of trafficking in narcotic drugs. He alleges violation of his rights during proceedings before national courts.

2. The Application is filed against 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, the Respondent State deposited the declaration prescribed under Article 34(6) of the Protocol on 29 March 2010, accepting the jurisdiction of African Court on Human and Peoples' Rights (hereinafter referred to as "the Court") to receive applications against it from individuals and NGOs. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its declaration. The Court has held that this withdrawal has no bearing on both pending and new applications filed before the withdrawal came into effect, that is one year after its deposit, being 22 November 2020.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The record indicates that the Applicant was arrested on 11 January 2015 at Inyala village in Mbeya Region, within the Respondent State while travelling by bus from Iringa to Mbeya. The bus was suspected of transporting a plant known as *Catha edulis* (*Mirungi* in Swahili), which is a prohibited drug under the Respondent State's Drugs and Prevention of Illicit Traffic in Drugs Act,

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (26 June 2020) (merits and reparations) 4 AfCLR 219, §§ 37-39.

Chapter 95. After the bus was inspected by the police, the said *Catha edulis* was found in the back seat, leading to the arrest of the Applicant on suspicion of being the owner.

4. On 19 January 2015, the Applicant was arraigned in the High Court sitting at Mbeya and charged with the offence of trafficking in narcotic drugs contrary to section 16(b)(1) of the Drugs and Prevention of Illicit Traffic in Drugs Act. On 16 December 2015, the High Court convicted the Applicant and sentenced him to life imprisonment. The Applicant appealed to the Court of Appeal at Mbeya, which dismissed his appeal on 30 August 2019.

B. Alleged Violations

5. The Applicant alleges that the Respondent State violated his rights as follows:

    i. The right to equality before the law and equal protection of the law protected under Article 3 of the Charter;
    ii. The right to equality and respect for his life and integrity of his person protected under Article 4 of the Charter;
    iii. The right to liberty and security of his person under Article 6 of the Charter; and
    iv. The right to a fair trial, guaranteed under Article 7 of the Charter.

6. In respect of the alleged violations above, the Applicant also invokes the corresponding provisions in the Universal Declaration of Human Rights (hereinafter referred to as "UDHR") and the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR").[3]

[3] The Respondent State became a State party to the ICCPR on 11 June 1976.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The original Application was filed by the Applicant, acting in person, on 19 September 2019.

8. The Application was notified to the Respondent State on 21 October 2019 and it was required to file its Response within 60 days of receipt of the notification.

9. During its 69th Ordinary Session, held from 12 June to 7 July 2023, the Court decided, *suo motu*, to grant legal assistance to the Applicant under its *pro bono* legal aid scheme. Resultantly, counsel Edwin Hans was appointed to represent the Applicant.

10. The Applicant subsequently, through counsel, filed an amended Application on 3 January 2024, which was served on the Respondent State on 18 January 2024. The Respondent State was given 30 days to file a Response or any observations to the amended Application.

11. Having received no Response from the Respondent State within the time prescribed by the Rules, pleadings were closed on 6 March 2024 and the Parties ~~were~~ duly notified.

12. On 6 February 2025, the Respondent State filed its Response, together with a request for extension of time within which to submit its Response to the amended Application.

13. The Respondent State's request for extension of time was transmitted to the Applicant, requesting him to file any observations on the request within 15 days.

14. On 4 March 2025, the Applicant acknowledged receipt of the Respondent State's request, indicating that he had "no concern", leaving the matter to the Court's discretion.

15. On 2 June 2025, the Court granted the Respondent State's request and reopened pleadings. The Respondent State's Response was also deemed to have been properly filed.

16. The Respondent State's Response was transmitted to the Applicant on 16 June 2025 and he was invited to submit a Reply or observations within 30 days.

17. The Applicant filed his Reply on 9 July 2025 and this was transmitted to the Respondent State, for information, on 21 July 2025.

18. Pleadings were, again, closed on 24 July 2025, and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

19. On the merits, the Applicant prays the Court to find that the Respondent State has violated the following rights:

    i. The right to equality before the law and equal protection of the law protected under Article 3 of the Charter;
    ii. The right to equality and respect for his life and integrity of his person protected under Article 4 of the Charter;
    iii. The right to liberty and security of his person under Article 6 of the Charter; and
    iv. The right to a fair trial, guaranteed under Articles 7 of the Charter.

20. On reparations, the Applicant prays the Court to issue the following orders:

    i. A reversal of a criminal conviction followed by a retrial of the Applicant's case;

ii. Release of the Applicant on bail while awaiting the internal arrangement of the Respondent State on retrial procedures; and
iii. The Respondent State to use national mechanisms to annul or release the Applicant, like the Presidential pardon.

21. With respect to jurisdiction and admissibility, the Respondent State prays the Court to grant the following orders:

i. A declaration that the Honourable Court is not vested with jurisdiction to determine the Application;
ii. A declaration that the Application has not met the admissibility requirements provided in Article 56(5) of the Charter read together with Rule 50(2)(e) of the Rules of the Court, 2020; and
iii. That the Application be declared inadmissible.

22. On merits and reparations, the Respondent State prays that the Court grant the following orders:

i. Declaration that the Respondent State has not violated the Applicant's right to equality before the law and equal protection of the law protected under Article 3 of the Charter;
ii. Declaration that the Respondent State has not violated the Applicant's right to equality and respect for his life and integrity of his person protected under Article 4 of the Charter;
iii. Declaration that the Respondent State has not violated the Applicant's right to liberty and security of his person under Article 6 of the Charter;
iv. Declaration that the Respondent State has not violated the Applicant's right to a fair trial, guaranteed under Articles 7 of the Charter.
v. Declaration that the Applicant was arrested, tried and convicted in accordance with the laws of the Respondent State and international human rights standards;
vi. That the Application is devoid of merit;
vii. That the Application be dismissed;
viii. Any other relief the Court will deem fit to grant;
ix. That costs be borne by the Applicant;
x. The Applicant's prayer for restitution is devoid of merit.

V. JURISDICTION

23. The Court recalls 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.

24. In accordance with Rule 49(1) of the Rules, "[t]he Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, the Protocol and these Rules."

25. On the basis of the above provisions, the Court must, in any matter, conduct a preliminary assessment of its jurisdiction and dispose of any objections thereto, if necessary.

26. In the instant Application, the Respondent State raises an objection to the Court's material jurisdiction. The Court will thus consider this objection before considering other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

27. The Respondent State contends that the Court is devoid of jurisdiction to entertain the instant Application because the Applicant is asking the Court to evaluate the evidence adduced before its national courts, and in effect inviting the Court to exercise appellate jurisdiction. The Respondent State submits that the Court does not have appellate jurisdiction over its national courts. In support of its submissions, the Respondent State has cited the Court's decision in *Christopher Jonas v. United Republic of Tanzania*.

*

28. In his Reply, the Applicant argues that he has not moved the Court to re-evaluate the evidence and its admissibility, but to assess whether there is a violation of the Charter, the UDHR, the ICCPR and any other instrument that guarantees the right to a fair trial to which the Respondent State is a party.

***

29. The Court reiterates that in accordance with Article 3(1) of the Protocol, it has jurisdiction to consider any Application filed before it provided the Applicant alleges violation of the rights guaranteed in the Charter, the Protocol or any other human rights instruments ratified by the Respondent State.[4] In exercising this jurisdiction, the Court does not operate as an appellate court.[5] This, however, does not bar the Court from interrogating proceedings before the national courts and assessing their compliance with the Charter, the Protocol and other international human rights instruments ratified by the State concerned.[6]

30. In the instant Application, the Applicant alleges violation, in the course of national proceedings, of his right to equality before the law and equal protection of the law under Article 3 of the Charter, equality and respect for his life and integrity of his person under Article 4 of the Charter, liberty and security of his person under Article 6 of the Charter and fair trial under Article 7 of the Charter. These rights are protected by the Charter to which the Respondent State is a party. The Court, therefore, holds that its material jurisdiction is established.

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[4] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Jibu Amir alias Mussa and Saidi Ally Mang'aya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 18.
[5] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.
[6] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 25.

31. Consequently, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to determine the present Application.

B. Other aspects of jurisdiction

32. The Court notes that the Respondent State has not contested its personal, temporal and territorial jurisdiction, and there is nothing in the pleadings indicating that the Court is without jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, the Court must satisfy itself that all the conditions pertaining to these aspects of its jurisdiction are fully satisfied.[7]

33. In relation to its personal jurisdiction, the Court recalls, as indicated in paragraph 2 of this Judgment, that the Respondent State became a party to the Charter on 21 October 1986, and the Protocol on 10 February 2006; and on 29 March 2010, deposited the Declaration. The Court further recalls that on 21 November 2019, the Respondent State deposited an instrument withdrawing its Declaration. As per the Court's jurisprudence, the withdrawal of the Declaration does not apply retroactively and only takes effect 12 months after the instrument of such withdrawal has been deposited, in this case, on 22 November 2020.[8] This Application is thus unaffected having been filed before the said date, specifically on 19 September 2019, which was before the withdrawal took effect.

34. Consequently, the Court finds that it has personal jurisdiction to determine the present Application.

35. Regarding its temporal jurisdiction, the Court observes that the violations alleged in the present Application emanate from the Applicant's trial which was concluded with the Respondent State's Court of Appeal's judgment delivered on 30 August 2019. The Court of Appeal's decision, this Court

[7] *Centre for Human Rights and Others v. United Republic of Tanzania,* ACtHPR Application No. 019/2018, Judgment of 5 February 2025, § 43.
[8] *Cheusi v. Tanzania*, *supra*, §§ 35-39.

observes, was delivered after the Respondent State had ratified the Protocol.

36. The Court thus holds that it has temporal jurisdiction in this Application.

37. With regard to territorial jurisdiction, the Court notes that the alleged violations are said to have occurred in the Mbeya Region, within the territory of the Respondent State. In the circumstances, the Court finds that it has territorial jurisdiction.

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

VI. ADMISSIBILITY

39. Article 6(2) of the Protocol provides that, "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter." Pursuant to Rule 50(1) of the Rules,[9] "[t]he 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."

40. Rule 50(2) of the Rules,[10] which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all the following conditions:
>
> i. Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> ii. Comply with the Constitutive Act of the African Union and the Charter;
> iii. Not contain any disparaging or insulting language;

[9] Rule 39(1), Rules of Court, 2 June 2010.
[10] Rule 40, Rules of Court, 2 June 2010.

iv. Not be based exclusively on news disseminated through the mass media;
v. Be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
vi. Be filed 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
vii. Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union."

41. The Court notes that the Respondent State objects to the admissibility of the present Application on the ground that the Applicant did not exhaust local remedies.

42. The Court will, therefore, proceed to consider the objection before assessing other conditions of admissibility, if necessary.

A. Objection alleging non-exhaustion of local remedies

43. The Respondent State argues that the present Application was filed before the Applicant exhausted local remedies. According to the Respondent State, while the Applicant appealed against the trial court's decision to the Court of Appeal, he had an additional remedy of instituting a petition under Article 30(3) of its Constitution and section 4 of the Basic Rights and Duties Enforcement Act. In support of its argument the Respondent State has cited the Court's decisions in *Ramadhani Issa Malengo v. Tanzania*, and *Godfred Anthony v. Tanzania*. The Respondent State submits, therefore, that the Application should be dismissed for failure to exhaust the local remedies.

*

44. The Applicant contends that he filed the present Application after exhausting all local remedies. He has particularly highlighted that the Respondent State's Court of Appeal is the highest Court in the Respondent State and that there is no additional judicial remedy available.

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45. The Court observes that under Article 56(5) of the Charter, the provisions of which 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 to pursue them are unduly prolonged.[11] The rule of exhaustion of local remedies, as the Court has consistently pointed out, aims at providing States the opportunity to deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same.[12]

46. In the instant Application, the record reveals that after being convicted by the High Court at Mbeya on 16 December 2016, the Applicant appealed to the highest Court in the Respondent State, the Court of Appeal, which dismissed his appeal on 30 August 2019. The Applicant, therefore, exhausted the available judicial remedies.

47. As for the Respondent State's argument relating to the Applicant's failure to file a constitutional petition, the Court recalls that it has consistently held that this remedy, as framed in the Respondent State's legal system, is an extraordinary remedy that no applicant is required to exhaust.[13]

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[11] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.
[12] *African Commission on Human and Peoples*' *Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[13].*Reuben Juma and Gawani Nkende v. United Republic of Tanzania*, ACtHPR, Consolidated Applications Nos. 015/2017 and 011/2018, Judgment of 5 September 2023 (merits and reparations), § 45.

48. In light of the above, the Court finds that the Applicant exhausted local remedies as provided under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules.

49. The Court, consequently, dismisses the Respondent State's objection to the admissibility of the present Application on the ground of non-exhaustion of local remedies.

B. Other admissibility requirements

50. The Court notes that there is no contention between the parties on the Application's compliance with Rules 50(2)(a), (b), (c), (d), (f) and (g) of the Rules. Despite this, the Court, as provided under Rule 50(1), must satisfy itself that these conditions have been fully met.

51. From the record, the Court notes that the Applicant has fully identified himself, thus fulfilling the requirements of Rule 50(2)(a) of the Rules.

52. The Court also notes that the Applicant's claim is compatible with the Constitutive Act of the African Union, whose objectives, specifically under Article 3(h), are to promote and protect human and peoples' rights.[14] The Court further notes that the Application seeks to protect the Applicant's human rights as provided under the Charter, and that nothing on the record indicates that the Application is incompatible with the Constitutive Act of the African Union. Consequently, the Court finds that the requirement under Rule 50(2)(b) of the Rules has been met.

53. From the record, the Court finds that the language used in the Application is not disparaging or insulting against the Respondent State and its institutions or the African Union. The Court, consequently, finds that the Application meets the requirements under Rule 50(2)(c) of the Rules.

[14] Constitutive Act of the African Union, Article 3(h).

54. The Court further notes that the Application is not based exclusively on news disseminated through the mass media as it is premised on court records, copies of which have been filed with the Court. The Court finds, therefore, that the Application fulfils the requirements of Rule 50(2)(d) of the Rules of Court.

55. With regard to the requirement that an application should be filed within a reasonable time after exhaustion of local remedies, under Rule 50(2)(f) of the Rules, the Court recalls that the present Application was filed on 19 September 2019. The Court further notes that the Applicant's appeal to the Respondent State's Court of Appeal was dismissed on 30 August 2019. The present Application, therefore, was filed 20 days after the dismissal of the appeal by the Respondent State's Court of Appeal. While the Charter and the Rules do not give a specific timeframe within which an Applicant should seize the Court, after exhaustion of local remedies, the Court finds that the Applicant swiftly seized the Court, and the time that lapsed was manifestly reasonable.[15] Consequently, the Court finds that the requirement under Rule 50(2)(f) has been satisfied.

56. With regard to the requirement under Rule 50(2)(g) of the Rules, the Court notes that nothing in the record indicates that the Application concerns issues which have already been settled by any other international body in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the Charter or any other legal instrument of the African Union. Consequently, the Court finds that the Application fulfils the requirements of Rule 50(2)(g) of the Rules.

57. In view of the aforesaid, the Court holds that the instant Application fulfils all the admissibility requirements under Article 56 of the Charter and Rule 50(2) of the Rules and, consequently, declares the Application admissible.

[15] *Kija Nestory v. United Republic of Tanzania,* ACtHPR, Application No. 015/2018, Judgment of 13 November 2024 (merits and reparations), § 41.

VII. MERITS

58. The Applicant alleges that the Respondent State violated the following rights:

    i. The right to equality before the law and equal protection of the law;
    ii. The right to equality and respect for his life and integrity of his person;
    iii. The right to liberty; and
    iv. The right to fair trial.

59. The Court will address each of the alleged violations individually.

A. Alleged violation of the right to equality before the law and equal protection of the law

60. The Applicant alleges, without providing any explicatory details, that the Respondent State violated his right to equality before the law and equal protection of the law protected under Article 3 of the Charter.

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61. The Respondent State submits that it has not violated the Applicant's right to equality before the law and equal protection of the law under Article 3 of the Charter.

***

62. Article 3 of the Charter provides as follows:

    1. Every individual shall be equal before the law
    2. Every individual shall be entitled to equal protection of the law.

63. The Court recalls that it has previously emphasized that the right to equality before the law and equal protection of the law, under Article 3 of the Charter, is closely related to the right to protection against discrimination under Article 2 of the Charter.[16] The right to equality before the law requires that all persons shall be equal before courts and tribunals,[17] and that entities applying the law must do so equally with respect to all and that the law itself must treat everyone equally.[18]

64. Concerning the Applicant's allegations, the Court notes that the burden of proof for a human rights violation rests with the Applicant, unless the Court otherwise decides.[19] In the instant Application, the Applicant alleges that the Respondent State violated his right to equality before the law and equal protection of the law as protected under Article 3 of the Charter without providing any grounds or substantiating his claim.

65. In the circumstances, the Court finds that the Applicant has not proved the alleged violation of his right to equality before the law and equal protection of the law protected under Article 3 of the Charter. Consequently, the Court dismisses this allegation.

B. Alleged violation of the right to respect for one's life and integrity of a person

66. The Applicant alleges, again without offering any substantiation, that the Respondent State violated his right to life and the integrity of his person under Article 4 of the Charter.[20]

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[16] *African Commission on Human and Peoples' Rights v. Kenya* (merits), § 138.
[17] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, §§ 84-85.
[18] *XYZ v. Republic of Benin* (merits and reparations) (27 November 2020) 4 AfCLR 49, § 151.
[19] *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; *Edison Simon Mwombeki v. United Republic of Tanzania*, ACtHPR, Application No. 030/2018 Judgment of 13 November 2024 (merits), § 68.
[20] Although the Applicant included the alleged violation of his right to equality in his averments under Article 4 of the Charter, the Court notes that Article 4 of the Charter does not cover the right to equality.

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67. While the Respondent State does not directly address this allegation, it generally submits that it has not violated the rights of the Applicant under Article 4 of the Charter.

***

68. Article 4 of the Charter provides that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

69. The Court recalls that it has previously held that the right to life under Article 4 of the Charter is inviolable and shall be respected and not be arbitrarily deprived under any circumstances.[21]

70. As earlier noted by the Court, the burden of substantiating a claim for a violation of a human right rests on anyone who alleges. In the present instance, the Court notes that the Applicant has made a general allegation of a violation of his rights under Article 4, without providing any ground or evidence to substantiate it.

71. In the circumstances, the Court finds that the Applicant has failed to prove his allegations, and thus dismisses his allegations of violation of Article 4 of the Charter.

C. Alleged violation of the right to liberty and security of his person

72. The Applicant alleges, without offering any substantiation, that the Respondent State violated his right to liberty and security of his person under Article 6 of the Charter.

[21] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 98.

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73. The Respondent State submits that it has not violated the Applicant's rights under Article 6 of the Charter.

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74. Article 6 of the Charter guarantees the right to liberty and provides as follows:

> Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

75. The Court notes that the right to liberty and security of a person as provided under the Charter strictly prohibits any arbitrary arrest and detention. The Court reiterates its position that an arrest or detention becomes arbitrary if it is not in accordance with the law, lacks clear and reasonable grounds or is conducted in the absence of procedural safeguards against arbitrariness.[22]

76. The Court further notes that while the Applicant has made a general allegation of a violation of his rights under Article 6 of the Charter, he has not adduced any evidence to substantiate the allegation. Additionally, nothing in the record shows that the Applicant was arbitrarily arrested or detained.

77. Having failed to substantiate his claims of violation of his rights under Article 6 of the Charter, the Court finds that the alleged violation has not been

[22] *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 131; *Robert John Penessis v. United Republic of Tanzania,* ACtHPR, Application No. 13/2015, Judgment of 28 November 2019 (merits and reparations), § 108.

proved. In the circumstances, therefore, the Court dismisses the allegation of violation of Article 6 of the Charter.

D. Alleged violation of the right to a fair trial

78. The Court recalls that Article 7 of the Charter provides as follows:

> 1. Every individual shall have the right to have his cause heard. This comprises:
>   (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
>   (b) The right to be presumed innocent until proven guilty by a competent court or tribunal;
>   (c) The right to defence, including the right to be defended by counsel of his choice; and
>   (d) The right to be tried within a reasonable time by an impartial court or tribunal.
> 2. No one may be condemned for any act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can only be imposed on the offender.

79. The Court notes that the protections contained in Article 7 of the Charter are, largely, also contained in other international human rights instruments, including the ICCPR[23] and the UDHR.[24]

80. In so far as the Applicant challenges particular findings of the domestic courts, the Court reiterates that it does not sit as an appellate Court, in respect of decisions from the Respondent State.[25] This, however, does not

[23] ICCPR, Article 14. See also United Nations Human Rights Committee General Comment No. 32 Article 14 of the ICCPR (2007).
[24] UDHR, Articles 7 & 10.
[25] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

preclude it from analysing evidence tabled before it and assessing whether there is any violation of the Charter and other international human rights instruments.[26]

81. In the instant Application, the Applicant avers that the Respondent State has violated his right to fair trial as guaranteed by Article 7 of the Charter in several ways.

82. Specifically, the Applicant's allegations coalesce around the following allegations:

    i. Catha edulis was used as evidence by the Respondent State during committal proceedings, even though it was not listed as part of the evidence to be adduced;
    ii. The chain of custody of the Catha edulis was broken;
    iii. The search and seizure certificate was not signed by the driver of the Fuso bus; and
    iv. The caution statement was taken outside the mandatory four-hour period.

83. The Court will thus proceed to assess each of these elements individually to determine if indeed there is a violation of Article 7 of the Charter.

i. Allegations relating to committal proceedings and the listing of the *Catha edulis*

84. The Applicant alleges that contrary to the law, *Catha edulis*, which formed the substratum of the case against him, was not listed among the exhibits to be adduced by the prosecution but was still presented in court by the prosecution as part of the evidence.

85. The Applicant claims that before a hearing is conducted, committal proceedings ought to be conducted in the subordinate court. This includes

[26] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 599, § 25.

making known to the accused person the list of witnesses to be called and exhibits to be used. The Applicant alleges that, contrary to this requirement, *Catha edulis* was not listed among the exhibits to be adduced by the prosecution.

86. The Applicant further alleges that despite this, the Respondent State's trial court went ahead to accept the receipt and identification of *Catha edulis* as an exhibit. The Applicant also claims that the Court of Appeal failed to nullify the committal proceedings, even though they were conducted contrary to Section 246(2) of the Respondent State's Criminal Procedure Act, Chapter 20 RE 2022 (hereinafter referred to as "the CPA").

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87. The Respondent State refutes this allegation. It contends that under the list of documentary evidence, there was a report of the *Catha edulis* from the government Chemist, Certificate of Seizure, Certificate of Value of Narcotic Drug and Psychotropic Substance and the Caution Statement which referred to *Catha edulis*.

88. In reference to Section 246(2) of the Criminal Procedure Act,[27] the Respondent State argues that what is important in this provision is the statements or documents containing the substance of the evidence of the witnesses without any particular mention of the real exhibit. The Respondent State further argues that the substance of witness evidence was clearly on record to enable the Applicant to prepare his defence, and that the Applicant is raising doubts which are not sufficient to overturn the conviction and sentence.

[27] "Upon appearance of the accused person before it, the subordinate court shall read and explain or cause to be read to the accused person the information brought against him as well as the statements or documents containing the substance of the evidence of witnesses whom the Director of Public Prosecutions intends to call at the trial."

89. The Respondent State also avers that the Applicant's allegation that *Catha edulis* was tendered only for identification is not correct since the *Catha edulis* was tendered at the trial court and admitted as Exhibit "P3" collectively, and that the same was used by the trial court to convict the Applicant. The Respondent State also argues that under section 246(2) of the CPA, there is no mention of real exhibits and that what is material is only the substance of the evidence of the witnesses.

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90. From the record, the Court notes that the Applicant was arrested, detained and subsequently charged with trafficking in *Catha edulis*. The Court also notes that the same *Catha edulis* was adduced by the Prosecution at the trial court, with the exact number of bundles being 138. The number of bundles remained consistent throughout the trial process. The Court further notes that several accompanying documents were filed before the Respondent State's High Court, including an expert report from a government chemist containing the relevant information on the chemical composition of the drug *Catha edulis*. Importantly, the Court notes that all the individuals who prepared these documents, including the police officers and the government chemist, appeared before the Respondent State's courts during trial to give their evidence, and were all subjected to cross-examination.

91. The thread that runs through the whole process, from the arrest of the Applicant, his prosecution at the High Court and the subsequent appeal to the Court of Appeal, relates to the trafficking in the drug *Catha edulis*. The Court notes that while the same may not have been expressly mentioned as one of the exhibits to be relied upon, it is obvious that it was the main object for which possession and trafficking the Applicant was prosecuted.

92. The Court further notes that in accordance with Article 7(1)(c) of the Charter, the Applicant was represented by Counsel of his choice, who was granted

an opportunity by the Respondent State's courts to raise any objection(s) in relation to the evidence adduced by the prosecution.

93. Given the evidence, as manifest from the record of the domestic proceedings, and also bearing in mind that the Applicant bears the burden of proving a violation of a human rights violation,[28] the Court finds that the Applicant has failed to substantiate the claim of violation of his right to a fair trial under Article 7 of the Charter.

94. In the circumstances, therefore, the Court dismisses the Applicant's claim of violation of Article 7 of the Charter.

ii. Allegation relating to the broken chain of custody of the *Catha edulis*

95. The Applicant alleges that the chain of custody of *Catha edulis* was broken during handling of the drugs, and that this violated his right to a fair trial under Article 7 of the Charter.

96. The Applicant further avers that both the Respondent State's trial court and the Court of Appeal failed to take into account the fact that the prosecution did not establish the chain of custody in relation to the *Catha edulis*, rendering the trial prejudicial against him. The Applicant claims that the Court of Appeal, on the contrary, stated that the police occurrence book was not necessary to prove the chain of custody, since the chain of custody conditions ought to be relaxed in relation to substances which cannot change hands easily.

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97. The Respondent State, in its submissions, disputes the Applicant's averments arguing that it was able to demonstrate a chain of custody in

[28] *Sijaona Chacha Machera v. United Republic of Tanzania*, AfCHPR, Application No. 035/2017 Judgment of 22 September 2022 (merits), § 82.

terms of handling of the *Catha edulis* from the time of arrest to the time of producing evidence before the trial court.

98. The Respondent State further submits that even though no documentary evidence was adduced to show the chain of custody, the oral evidence from all the people who handled the drug demonstrated the handling of 138 bundles of the *Catha edulis*, and thus the chain of custody was not broken.

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99. From the record, the Court notes that the Applicant was found in possession of *Catha edulis* and arrested while travelling on a Fuso bus on 11 January 2015. During the search, seizure of *Catha edulis* and the arrest of the Applicant, a seizure certificate was prepared, which was signed by the Applicant, two police officers and two passengers who witnessed the search and seizure. A copy of the certificate was tendered as evidence before the High Court and this also formed part of the record of the proceedings before the Court of Appeal as well as part of the records before this Court.

100. The Court further notes that upon its seizure, the bundles of *Catha edulis* were counted, and a total of 138 bundles was recorded. The bag containing *Catha edulis* was taken to the Respondent State's police station, where it was inspected, and the bundles were also counted and recorded in the presence of the Applicant, the police investigator No. E382/Cpl. Simon and the exhibits custodian, No. G2445PC Daniel. The exhibits custodian then took the bag and stored it in the exhibits room. On 13 January 2025, the seized bag was taken to the Government Chemist Laboratory Agency (GCLA), with reference number MBD/CID/B.1/1/VOL.XXV/141, and after filling in a PF. 180, a document used for requesting analysis of substances.

101. The bag, together with a PF. 180 was received by Faustin John Wanjola, the Respondent State's Government Chemist. He then opened it in the presence of police officer Simon and Daniel and counted the bundles and found 138 of them. He then weighed them and found them to be 42.44

kilograms, after which he took samples from them. The officers then took the bag and returned it to the exhibits room at the Respondent State's police station. The Government Chemist released a report, dated 15 January 2015 and referenced MK/SHZL/S.10/14, indicating that the samples were indeed *Catha edulis*. The same report was tabled as part of the evidence before the High Court and the Court of Appeal of the Respondent State. The Court further notes that all the persons involved in preparing these documents were brought before the Respondent State's High Court. They tendered their evidence and were cross-examined to ascertain the veracity of their evidence and the accompanying documents.

102. From the record, the Court notes, among other things, that the Applicant voluntarily signed the seizure certificate, immediately after the search and seizure of what was then suspected to be *Catha edulis*. Secondly, the counting and confirmation of *Catha edulis* immediately after the seizure and at the police station was done in the presence of the Applicant. Thirdly, more than one individual witnessed the search and seizure, and the counting both at the point of arrest all the way to the point of transmission to the Respondent State's Government Chemist. Fourthly, all the individuals involved in the investigation were called to give their testimony in the Respondent State's High Court, with the Applicant and his legal counsel given opportunity to cross-examine them.

103. From the evidence before it, the Court has found no action which can, either on its own or in conjunction with other factors, be considered to have amounted to a violation of the Applicant's right to fair trial.

104. The Court, consequently, finds that the Applicant has not adduced sufficient evidence to substantiate the allegation of violation of the right to fair trial under Article 7 of the Charter. The Court, therefore, dismisses the alleged violation of the right to a fair trial by reason of the chain of custody.

iii. Allegation relating to the signing of the search and seizure certificate

105. The Applicant claims that the search and seizure certificate was not signed by the driver of the Fuso bus.

106. It is also the Applicant's contention that the certificate of search and seizure was signed by someone who was not the driver of the car. According to him, both the Respondent State's trial court and the Court of Appeal failed to discuss the effect of admitting such a certificate as part of the evidence against him.

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107. The Respondent State contests this claim, arguing that the signing by the driver was immaterial owing to the circumstances under which the search and seizure were conducted.

108. It is the Respondent State's contention that the seizure came as an emergency, and that the search was done in accordance with Section 42 of its CPA. It thus submits that the Applicant's allegation that the seizure was conducted contrary to the law is inconsequential.

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109. The Court recalls its earlier position that domestic courts enjoy a wide margin of appreciation in terms of assessing the probative value of evidence before it.[29] This, however, does not preclude it from evaluating proceedings of the domestic Courts to assess whether or not the same are in consonance with the Charter and the international human rights standards.[30]

[29] *Kijiji Isiaga v. United Republic of Tanzania* (merits), (21 March 2018) 2 AfCLR 218, § 65.
[30] *Mussa Zanzibar v. Tanzania supra,* § 61.

110. Based on the record before the Court, it is clear that the search and seizure certificate was signed by a total of four individuals. These are: the police officer who supervised the search and seizure, the Applicant and two other independent passengers who were present in the Fuso bus when the search and seizure of *Catha edulis* was conducted. Importantly, from the record, the Court notes that all the persons who signed the seizure certificate, including the Applicant, were at the back of the vehicle when the search and seizure took place while the driver of the vehicle was at the front of the vehicle.

111. Consequently, the Court finds that the Applicant has not proved his claims and hereby dismisses his allegation of violation of his right to fair trial due to the signing of the search and seizure certificate.

iv. Allegation relating to the taking of the caution statement

112. The Applicant alleges that his caution statement at the police station was taken outside the mandatory four-hour period from when he was arrested, as required under Section 50 of the Respondent State's CPA.

113. Furthermore, the Applicant alleges that the Court of Appeal, in justifying the delay, invoked Section 50(2) of the CPA and excluded the mandatory 4-hour limit interview requirement.[31] This, according to the Applicant, is not the duty of the Respondent State's trial court and the Court of Appeal, and in effect leads to a violation of his right to fair trial under Article 7 of the Charter.

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[31] Section 50(2)(a) provides as follows: "In calculating a period available for interviewing a person who is under restraint in respect of an offence, there shall not be reckoned as part of that period any time while the police officer investigating the offence refrains from interviewing the person, or causing the person to do any act connected with the investigation of the offence- (a) while the person is, after being taken under restraint, being conveyed to a police station or other place for any purpose connected with the investigation;"

114. The Respondent State refutes the Applicant's claim and submits that the caution statement was taken well within the mandatory four-hour period.

115. The Respondent State contends that, as a general rule, while the caution statement of an accused person is required to be taken within four hours, the law requires that while calculating the four hours there is supposed to be excluded the period taken to convey an accused person to the police station or any other place for the purpose connected to the investigation.

116. It is the Respondent State's further contention that the Applicant was arrested at 07:45 hours, then conveyed to a Police Station and arrived at 10:30 hours on the same day. Subsequently, the interview started at 12:45 hours and ended at 14:20 hours, which was well within the required four hours. The Respondent State further states that the Court of Appeal reviewed the evidence and found nothing worthy to disturb the High Court's decision.

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117. The Court notes, from the record, that the Applicant was arrested at 07:45 hours. He was then taken to the police station and arrived at 10:30 hours. His statement was recorded from 12:45 hours to 14:20 hours. The Court recalls that section 50 of the Respondent State's CPA requires that a caution statement should be taken within a period of four hours from the moment an accused person is taken under restraint. The provision further requires that while calculating this period, the time taken to move the person to the police station ought to be taken into account.

118. From the record, as highlighted above, the Court observes that the Applicant's statement was taken way within the required timelines of four hours. Consequently, the Court finds that no injustice could have reasonably been occasioned against the Applicant in the manner in which his statement was taken.

119. Based on the foregoing, the Court finds that the Applicant has failed to prove that his right to fair trial was violated as a result of the manner in which his caution statement was taken. The Court thus dismisses his allegations on this point.

120. In view of the above, therefore, the Court dismisses the Applicant's allegations and holds that the Respondent State has not violated the Applicant's right to fair trial protected under Article 7 of the Charter.

VIII. REPARATIONS

121. Article 27(1) of the Protocol stipulates that:

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

122. The Court recalls its previous position that reparations are only awarded whenever the responsibility of the Respondent State for an internationally wrongful act is established, and where there is a causal link between the wrongful act and the harm caused.[32]

123. Having found that the Respondent State did not violate the Applicant's rights, there is thus no basis to grant reparations. The Court, therefore, dismisses the Applicant's prayers for reparations.

IX. COSTS

124. The Applicant did not make any prayers on costs.

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[32] *Mhina Zuberi v. United Republic of Tanzania,* ACtHPR, Application No. 054/2016, Judgment of 26 February 2021 (merits and reparations), § 94. See also *XYZ v. Benin*, *supra,* § 158.

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125. The Respondent State prays the Court to rule that the costs be borne by the Applicant.

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126. The Court observes that Rule 32(2) of its Rules provides that "unless otherwise decided by the Court, each party shall bear its own costs."

127. In the instant Application, the Court does not find any justification to depart from the above provision and, therefore, rules that each party shall bear its own costs.

X. OPERATIVE PART

128. 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 this Application;
iv. *Declares* that the Application is admissible.

On the merits

v. *Holds* that the Respondent State did not violate the Applicant's right to equality before the law and equal protection of the law as protected under Article 3 of the Charter;

vi. *Holds* that the Respondent State did not violate the Applicant's right to life as protected under Article 4 of the Charter;

vii. *Holds* that the Respondent State did not violate the Applicant's right to liberty and security of the person under Article 6 of the Charter;

viii. *Holds* that the Respondent State did not violate the Applicant's right to fair trial as guaranteed under Article 7 of the Charter.

On reparations

ix. *Dismisses* the Applicant's prayers for reparations.

On costs

x. *Orders* that each party shall bear its own costs.

Signed:

Blaise TCHIKAYA, President;

Chafika BENSAOULA, Vice-President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA – Judge;

and Grace W. KAKAI, Deputy Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70 of the Rules, the Separate Opinion of Judge Rafaâ BEN ACHOUR and the Joint Declaration of Judge Blaise TCHIKAYA and Judge Ntyam O. MENGUE are appended to this Judgment.

Done at Arusha, this Sixth Day of March in the Year Two Thousand and Twenty-Six in English and French, the English version being authoritative.