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

THE MATTER OF

ELINAZI ELIABU ALIAS MSHANA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 060/2019

JUDGMENT

6 MARCH 2026



TABLE OF CONTENTS

TABLE OF CONTENTS	i
I. THE PARTIES.....	2
II. SUBJECT OF THE APPLICATION	2
A. Facts of the matter	2
B. Alleged violations	3
III. SUMMARY OF THE PROCEDURE BEFORE THE COURT	4
IV. PRAYERS OF THE PARTIES.....	4
V. JURISDICTION	6
A. Objection to material jurisdiction	7
B. Other aspects of jurisdiction	8
VI. ADMISSIBILITY	10
A. Objection based on non-exhaustion of local remedies	11
B. Other conditions of admissibility	13
VII. MERITS	14
A. Alleged violation of the right to have one's cause heard	15
i. Allegation relating to the evidence upon which the conviction was based	15
ii. Alleged violation of the right to be tried within a reasonable time	18
B. Alleged violation of the right to dignity and prohibition against torture, degrading and inhuman treatment.....	22
C. Alleged violation of the right to liberty	24
VIII. REPARATIONS	25
IX. COSTS.....	25
X. OPERATIVE PART	26

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 WAKIO 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 Court¹ (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, Judge of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Elinazi ELIABU alias MSHANA

Represented by

Ally Abdallah MHYELLAH, Advocate at Mhyella and Co. Advocates.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by

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

After deliberation,

Renders this Judgment:

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

I. THE PARTIES

1. Elinazi Eliabu *alias* Mshana (hereinafter referred to as “the Applicant”) is a Tanzanian national. At the time of filing the Application he was incarcerated at Ruanda Prison, at Mbeya, serving a 30-year sentence having been tried, convicted and sentenced for the offence of armed robbery. He alleges the violation of his rights during his arrest and before the national courts.
2. The Application is filed against the United Republic of Tanzania (hereinafter, “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, on 29 March 2010, deposited the Declaration provided for under Article 34(6) of the Protocol (hereinafter referred to as, “the Declaration”), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations with observer status before the African Commission on Human and Peoples’ Rights. 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 pending cases or on new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 22 November 2020.²

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that the Applicant along with four other persons were arrested for allegedly committing armed robbery on 3 January 2014. It is alleged that the five accused persons were arrested during the continuous hot pursuit from the scene of the crime. Immediately after the armed

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

robbery, the Applicant was pursued by the police by car. As the police closed in on the Applicant's car, the latter stopped his vehicle, disembarked and started to flee. A police inspector then ordered a police officer to fire a shot in the air to warn the Applicant to stop, but the Applicant continued to flee. The police instructor subsequently ordered the police officer to shoot the Applicant in the legs. The police officer carried out the order and shot the Applicant in the leg, arrested him and brought him to the police station. The four other accused were stopped and arrested separately at a police roadblock which was mounted after the police was informed that the accused had left the crime scene and were heading in that direction.

4. On 22 April 2014, the Applicant and the four other accused persons were convicted of armed robbery and sentenced to a 30-year prison sentence by the Resident Magistrate's Court at Mbeya.
5. The Applicant filed an appeal before the High Court of Tanzania at Mbeya which dismissed his appeal on 22 April 2016. The Applicant subsequently filed an appeal before the Court of Appeal of Tanzania which was dismissed on 30 August 2019.

B. Alleged violations

6. The Applicant alleges the violation of the following:
 - i. The right to a fair trial, guaranteed under Article 7 of the Charter;
 - ii. The right to be tried within reasonable time guaranteed under Article 7(1)(d) of the Charter;
 - iii. The right to dignity and prohibition against torture, degrading and inhuman treatment, guaranteed under Article 5 of the Charter;
 - iv. The right to liberty, guaranteed under Article 6 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. On 15 November 2019, the Applicant filed his Application. On 22 November 2019, the Registry sent a letter to the Applicant to request him to provide further elaboration regarding the rights whose violation he alleges and to submit a detailed claim on reparations and supporting evidence within 30 days. The Applicant did not respond to the Registry's request.
8. On 30 March 2022, the Registry requested the Applicant again to provide clarifications regarding his Application but the Applicant did not respond.
9. On 28 June 2023, the Court decided, *suo motu*, to grant legal assistance to the Applicant under its pro bono legal aid scheme. Resultantly, counsel Ally Abdallah MHYELLAH was appointed to represent the Applicant.
10. On 19 July 2023, the Applicant, through this Court-appointed counsel, requested leave to amend the Application, which was granted by the Court.
11. On 11 October 2023, the Applicant filed his amended Application which was served on the Respondent State on 13 November 2023. After an extension of time on 8 May 2024, the Respondent State filed its Response on 17 February 2025. The Applicant filed his Reply thereto on 25 April 2025.
12. On 28 October 2025, pleadings were closed and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

13. The Applicant prays for the Court to:
 - i. Find that it has jurisdiction to hear the Application;
 - ii. Find the Application admissible;

- iii. Find that the Respondent State has violated the Applicant's rights to a fair trial, protected under Article 7(1)(c) of the Charter with regard to the right to be tried within a reasonable time;
- iv. Find that the Respondent State has violated the Applicant's rights to liberty and personal freedom, protected under Article 6 of the Charter;
- v. Find that the Respondent State has violated the Applicant's right to a fair trial under Article 7(1) of the Charter, with regard to flouted criminal procedures during the trial;
- vi. Find that the Respondent State has violated the Applicant's rights to dignity and the prohibition against torture, degrading, and inhuman treatment as protected by Article 5 of the Charter;
- vii. Allow the Application and make orders to quash the decisions of the Respondent State's trial and appellate courts and order the release of the Applicant from prison;
- viii. Order the Respondent State to pay the Applicant reparations;
- ix. Issue any other order(s) that the Court may deem fit and just.

14. On reparations, the Applicant prays to the Court to:

- i. Set aside both the conviction and sentence imposed on the Applicant;
- ii. Restore the Applicant's liberty by releasing him from prison;
- iii. Order reparations in the amount of United States Dollars Thirty Thousand (USD 30,000) to the Applicant on account of moral damage suffered [sic];
- iv. Order reparations in the amount of United States Dollars Fifteen Thousand (USD 15,930) to the Applicant for loss of income [sic];
- v. Order the payment of United States Dollars Twenty Thousand USD 20,000 to the Applicant's dependant wife and three children [sic];
- vi. Grant any other order(s) that this Honourable Court may deem fit and just.

15. The Respondent State prays the Court to:

- i. Declare that it lacks jurisdiction to determine the Application;
- ii. Declare 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 Court, 2020;

- iii. Declare the Application inadmissible;
- iv. Declare that the Respondent State has not violated the provisions of Articles 3(1)(2), 5 and 7 of the Charter;
- v. Declare that the Applicant was arrested, tried and convicted in accordance with the laws of the Respondent State and international human rights standards;
- vi. Declare that the Application is devoid of merits;
- vii. Dismiss the Application;
- viii. Order the Applicant to pay costs;
- ix. Grant any other relief this Court will deem fit.

V. JURISDICTION

16. 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.
17. 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”.
18. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.
19. In the present Application, the Court notes that the Respondent State raises an objection to its material jurisdiction. The Court will, first, examine this objection before considering other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

20. The Respondent State contends that this Court is seized to sit as an appellate court, while it does not have such jurisdiction. According to the Respondent State, the Applicant is inviting this Court to quash the decisions of the Respondent State's domestic courts, while it lacks jurisdiction to do so.

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21. The Applicant argues that this Court has jurisdiction to interpret the rights alleged to have been violated by the Respondent State. The Applicant confirms that this Court is not an appellate court and specified that he did not appeal, rather he seeks "for direction and observation as to how the dispensation of justice should be observed by the member state when adjudicating matters at his sphere".

22. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged, are protected by the Charter or any other human rights instrument ratified by the Respondent State.³

23. The Court emphasises that its material jurisdiction is predicated on the Applicant's allegation of violations of human rights protected by the Charter or any other human rights instrument ratified by the Respondent State.⁴ In the instant matter, the Applicant alleges violations of Articles 5, 6 and 7 of the Charter which is an instrument that the Respondent State has ratified and which the Court has the power to interpret and apply in accordance with Article 3(1) of the Protocol.

³ *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 18.

⁴ *Diocles William v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 28; *Armand Guéhi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Elisamehe v. Tanzania, ibid*, § 18.

24. Specifically with regard to the objection about the Court exercising appellate jurisdiction, the Court recalls its established jurisprudence that it is not an appellate body with respect to decisions of national courts.⁵ However, “this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned”.⁶ The Court would, therefore, not be sitting as an appellate court if it were to consider the Applicant’s allegations in the present Application.
25. The Court further notes that the Respondent State’s objection concerns the claim that the Court lacks jurisdiction to quash the decisions of its domestic courts. In this regard, the Court recalls Article 27(1) of the Protocol which provides that “[if the Court finds that there has been violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”. Therefore, the Court has jurisdiction to grant different types of reparations, including an order to declare decisions of national courts null and void, an order to annul a conviction and sentence, and to order the release of an Applicant from prison, provided that the alleged violation has been established.⁷
26. For these reasons, the Court dismisses the Respondent State’s objection and holds that it has material jurisdiction in this Application.

B. Other aspects of jurisdiction

27. The Court observes that no objection has been raised with respect to its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule

⁵ *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

⁶ *Kennedy Ivan v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 48, § 26; *Guéhi v. Tanzania*, *supra*, § 33.

⁷ *Rajabu Yusuph v. United Republic of Tanzania*, AfCHPR, Application No. 036/2017, Ruling of 24 March 2022, § 27.

49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

28. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that the Respondent State became a party to the Charter on 21 October 1986, the Protocol on 10 February 2006, and on 29 March 2010, deposited the Declaration. However, on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.⁸ Since any such withdrawal of the Declaration takes effect 12 months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.⁹ This Application, having been filed before the Respondent State's withdrawal of its Declaration entered into effect, is thus not affected by it. The Court, therefore, finds that it has personal jurisdiction to examine the present Application.
29. In respect of its temporal jurisdiction, the Court notes that the violations alleged by the Applicant arose after the Respondent State became a party to the Protocol. Furthermore, the Court observes that the Applicant remains convicted based on what he considers an unfair process. Therefore, it holds that the alleged violations can be considered to be continuing in nature.¹⁰ For these reasons, the Court finds that it has temporal jurisdiction to examine this Application.

⁸ *Cheusi v. Tanzania*, *supra*, §§ 35-39.

⁹ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 540, § 67.

¹⁰ *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabè des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

30. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State, which is a party to the Charter and Protocol. In these circumstances, the Court holds that it has territorial jurisdiction.
31. In light of all of the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

32. Pursuant to Article 6(2) of the Protocol, “[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.
33. In line with Rule 50(1) of the Rules, “[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”.
34. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

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

- a. Indicate their authors even if the latter request anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

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

A. Objection based on non-exhaustion of local remedies

36. The Respondent State argues that the Applicant has not exhausted the remedies available within its legal system. It claims that the Applicant had the additional remedy of instituting a constitutional petition to the High Court under Article 30(3) of its Constitution and under its Basic Rights and Duties Enforcement Act, but never made an attempt to exhaust this remedy. For this reason, the Respondent State submits that this Application should be declared inadmissible for failure to exhaust available local remedies.

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37. The Applicant submits that he received a final decision from the Court of Appeal, the highest court in the Respondent state, and, therefore, exhausted local remedies. The Applicant further argued that there was “no chance to file a constitutional petition”.

38. The Court notes that pursuant to 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. The rule of exhaustion of local remedies 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.¹¹

39. The Court recalls its established jurisprudence that, where the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the applicant to have arisen from those proceedings.¹²
40. 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 that Court rendered its judgment on 30 August 2019. Therefore, the Respondent State had the opportunity to address the violations alleged by the Applicant arising from his trial and appeals.
41. Regarding the Respondent State's contention that the Applicant ought to have filed a constitutional petition, the Court has previously held that the Court of Appeal of Tanzania is the highest judicial organ within the Respondent State and that the constitutional petition procedure is an extraordinary remedy that applicants are not required to exhaust.¹³
42. The Court, therefore, finds that local remedies are deemed to have been exhausted since the Court of Appeal upheld the Applicant's conviction and sentence.

¹¹ *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

¹² *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 76; *Mohamed Selemani Marwa v. United Republic of Tanzania*, AfCHPR, Application No. 014/2016, Judgment of 2 December 2021 (merits and reparations), § 45; *Rajabu Yusuph v. United Republic of Tanzania*, AfCHPR, Application No. 036/2017 Ruling of 24 March 2022 (admissibility), § 51.

¹³ *Ibid*, §§ 63-65.

43. In light of the foregoing, the Court dismisses the Respondent State's objection based on non-exhaustion of local remedies and holds that local remedies were exhausted in the present Application.

B. Other conditions of admissibility

44. The Court observes that no objection has been raised with respect to the other admissibility requirements. Nonetheless, in line with Rule 50(1) of the Rules, it must satisfy itself that the Application is admissible before proceeding.
45. From the record, the Court notes that, the Applicant has been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.
46. The Court also notes that the claims made by the Applicant seek to protect his rights guaranteed by the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stipulated under Article 3(h), is to promote and protect human and peoples' rights. The Application also does not contain any claim or prayer that is incompatible with a provision of the Act. The Court, therefore, holds that the Application is compatible with the Constitutive Act of the African Union and the Charter and thus meets the requirements of Rule 50(2)(b) of the Rules.
47. The Court finds that the language used in the Application is not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules.
48. The Court further finds that the Application is not based exclusively on news disseminated through mass media as it is founded on court documents from the domestic courts of the Respondent State in fulfilment of Rule 50(2)(d) of the Rules.
49. In relation to the requirement for filing applications within a reasonable time, under Rule 50(2)(f) of the Rules, the Court recalls that neither the Charter

nor the Rules specify the time frame within which Applications must be filed, after exhaustion of local remedies. The Court underscores, in this regard, that in accordance with its jurisprudence "... the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis".¹⁴

50. In the present case, the Court notes that the decision of the Court of Appeal, dismissing the Applicant's appeal was rendered on 30 August 2019 while this Application was filed on 15 November 2019 – a period of 2 months and 16 days thus lapsed. The Court holds that the period of 2 months and 16 days that it took the Applicant to file this Application is manifestly reasonable within the meaning of Rule 50(2)(f).¹⁵
51. The Court further notes that, in compliance with Rule 50(2)(g) of the Rules, the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter.
52. In view of the foregoing, the Court finds that the Application meets all the admissibility requirements under Article 56 of the Charter as restated under Rule 50(2) of the Rules and, therefore, holds that the Application is admissible.

VII. MERITS

53. The Applicant alleges that the Respondent State violated his right to a fair trial, his right to be tried within reasonable time, his right to dignity and prohibition against torture, degrading and inhuman treatment, and his right

¹⁴ *Zongo and Others v. Burkina Faso* (merits), *supra*, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.

¹⁵ *Sébastien Germain Ajavon v. Republic of Benin*, AfCHPR, Application No. 065/2019, Judgment of 29 March 2021, §§ 86-87.

to liberty, protected under Articles 7, 7(1)(d), 5 and 6 of the Charter, respectively.

54. Taking into consideration his submissions, the Court considers that the main issue in this Application is the alleged violation of the Applicant's right to have his cause heard, protected under Article 7(1) of the Charter, which includes his right to be tried within reasonable time. Therefore, the Court will consider this allegation first, before assessing the alleged violations of his right to dignity and prohibition against torture, degrading and inhuman treatment, and his right to liberty, under Articles 5 and 6 of the Charter, respectively.

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

55. The Court observes, from the record, that the Applicant raises two grievances against the domestic courts whose actions or omissions he claims violated his rights. These grievances concern (i) the evidence upon which the conviction was based, and (ii) the duration of the proceedings before the national courts.

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

56. The Applicant submits that the "whole process of arraignment and judgments were not fair since the evidence adduced during the pleadings were not credible". The Applicant alleges that the manner in which both the trial court and the appellate courts evaluated the evidence tendered to them discloses manifest errors and led to a miscarriage of justice.

57. The Applicant, in particular, contends that the domestic courts were unfair because, according to him, the witnesses failed to identify him, but nonetheless the domestic courts proceeded to convict him. He further claims that "the witness statements were contradictory and riddled with inconsistencies and are far from constituting a watertight testimony", and,

therefore, did not meet the requirements of a fair hearing under Article 7 of the Charter.

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58. On its part, the Respondent State submits that the Applicant has merely given a general statement that the evaluation of evidence by the courts in the Respondent State discloses manifest errors, without identifying such errors. The Respondent State argues that the mere statement by the Applicant is not enough to warrant a pronouncement of a violation of the Applicant's rights by this Court, more substantiation is needed. It, therefore, contends that the Applicant's allegations are baseless and should be dismissed.
59. On the particular issue of identification by witnesses, the Respondent State notes that the identification of the Applicant was done by the witnesses who were the victims of the armed robbery and by the police officers who arrested them. The Respondent State asserts that the Applicant was properly identified at the scene of the crime, during arrest and in the court room during trial, in compliance with the law and the procedure.
60. The Respondent State further contends that the witness evidence of the prosecution was not contradictory, as the Applicant alleges. The Respondent State maintains that the Applicant has simply made a broad unsubstantiated statement. Moreover, according to the Respondent State, its Court of Appeal addressed the issue relating to visual identification of the Applicant and the doctrine of recent possession in respect of the offence of armed robbery. Hence, all grounds of appeal were fairly analysed and determined accordingly, thus the conviction of the Applicant was lawfully and rightfully sustained.

61. Article 7(1) of the Charter provides that “[e]very individual shall have the right to have his cause heard”.

62. The Court has previously held that:

domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular piece of evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.¹⁶

63. The above notwithstanding, the Court can, in evaluating the manner in which domestic proceedings were conducted, intervene to assess whether domestic proceedings, including the assessment of the evidence, was done in consonance with international human rights standards.¹⁷

64. In the instant case, the Applicant is alleging that the domestic proceedings and in particular the consideration of the evidence leading to his conviction, were marred with irregularities.

65. The Court reiterates, that in criminal proceedings the conviction of individuals for a crime shall be with certitude, and that a “fair trial requires that the imposition of a sentence in a criminal offence, and in particular a heavy prison sentence, shall be based on a strong and credible evidence. That is the purport of the right to the presumption of innocence, also enshrined in Article 7 of the Charter”.¹⁸

66. The record shows that the Applicant’s grounds of appeal before the High Court and the Court of Appeal are essentially being raised again before this Court. The Court further notes, from the record before it, that the High Court and the Court of Appeal took time to consider, assess and confirm the credibility of the evidence, including in particular the issue of identification

¹⁶ *Kijiji Isiaga v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 218, § 65.

¹⁷ *Ibid*, § 66.

¹⁸ *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 174.

by the witnesses, and found that the charges against the Applicant were proven beyond reasonable doubt.

67. Accordingly, after examination of the record, the Court considers that the manner in which the proceedings before the domestic courts were conducted, including the consideration of the evidence, revealed no manifest errors or miscarriage of justice requiring its intervention. The Court, therefore, dismisses the Applicant's allegations and holds that the Respondent State has not violated his right to be heard, protected under Article 7(1) of the Charter.

ii. Alleged violation of the right to be tried within a reasonable time

68. The Applicant further alleges that he was not tried within a reasonable time, as guaranteed under article 7(1)(d) of the Charter. To substantiate this claim, the Applicant refers to the overall duration of his trial and appellate proceedings, as well as specifically to the time taken between his arrest and his arraignment in court.
69. With regard to the overall duration of his trial and his appeals, the Applicant submits that the delay in his judicial proceedings itself is a weighty punishment on its own, warranting a more lenient sentence overall, not to mention the great anxiety it caused him regarding the uncertainty of his future.
70. Concerning the time taken between his arrest and his arraignment in court, the Applicant contends that he and the other accused remained in custody for more than 24 hours before being arraigned in court, contrary to section 32 of the Respondent State's Criminal Procedure Act and that no explanation was ever provided as to why they were not arraigned within 24 hours from the date they were arrested. The Applicant submits that he and his fellow accused persons were arraigned in the Resident Magistrate's Court of Mbeya on 10 January 2014, being seven days after their arrest. The Applicant further asserts that since his arrest, he was kept in custody

and he did not in any way impede the progress of the investigation before his arraignment in court. As such, the Applicant maintains that the Respondent State had an obligation to ensure that the proceedings against him and his fellow accused were handled expeditiously and with due diligence.

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71. The Respondent submits that the Applicant was tried within a reasonable time considering the gravity of the offence that required all evidence in relation to his case to be gathered and properly analysed for the sake of justice. The Respondent State notes that the trial against the Applicant was determined in less than four months from the time the Applicant was arrested and arraigned in court. In respect of the Applicant's appeal before the High Court, the Respondent State contends that the time taken to determine the appeal was reasonable since it was determined in less than two years. Furthermore, the Respondent State avers that the appeal was adjourned several times at the request of both parties. The Respondent State, therefore, submits that if this Court would find that there was a delay in prosecuting the appeal, the Court will find that the Applicant is also to be held responsible for the same.

72. With regard to the time taken between the Applicant's arrest and his arraignment before the trial court, the Respondent State submits that the Applicant was arraigned in court as soon as practicable, as per the requirement of Section 32 of the Criminal Procedure Act. The Respondent State further contends that the investigation into the offence was completed within seven days from the time the Applicant was arrested and the trial commenced the very same date the Applicant was arraigned in court.

73. Article 7(1)(d) provides that “[e]very individual shall have the right to have his cause heard. This comprises [...] the right to be tried within a reasonable time”.
74. The Court recalls its decision in *Wilfred Onyango Nganyi and 9 Others v. Tanzania*, where it held that “... there is no standard period that is considered reasonable for a court to dispose of a matter. In determining whether time is reasonable or not, each case must be treated on its own merits”.¹⁹
75. As the Court has previously established, various factors are considered in assessing whether a case was disposed of within a reasonable time within the meaning of Article 7(1)(d) of the Charter. These factors include the complexity of the case, the behaviour of the parties and the behaviour of the authorities.²⁰
76. In the present case, the Court notes that the Applicant contests the total duration of the time it took to finalise his trial and appellate proceedings as well as the time it took between his arrest and his arraignment in court.
77. The Court recalls that the Applicant was arrested on 3 January 2014 and was arraigned before the District Court on 10 January 2014, which was also the date the actual trial by Resident Magistrate’s Court commenced, ending with the Court finding the Applicant guilty and being sentenced on 22 April 2014. In total, the trial proceedings, starting from the Applicant’s arrest leading to the Applicant’s conviction and sentencing by the District Court, took three months and 19 days.
78. The Court further notes that the Applicant’s appeal in the High Court was finalised on 22 April 2016, that is after 24 months, and his appeal before the

¹⁹ *Wilfred Onyango Nganyi and Others v. United Republic of Tanzania* (merits) (2016) 1 AfCLR 507, § 135.

²⁰ See *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, §§ 122-124; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 104 and *Nganyi and Others v. Tanzania* (merits), *supra*, § 155.

Court of Appeal was finalised on 30 August 2019, that is after three years, four months and eight days. The total duration of his trial and appellate proceedings, between his arrest and final appeal, being five years, seven months and 27 days.

79. The Court will thus take into account this timeline in determining whether or not the time taken to conclude the Applicant's trial and appellate proceedings were reasonable.
80. With respect to the complexity of the case, the Court notes the nature and seriousness of the offence, the circumstances in which it took place, the fact that the Applicant was charged together with various other accused and that the witnesses testified on different dates.
81. As to the behaviour of the parties and the national judicial authorities, the Court notes that no argument has been made that the domestic authorities deliberately delayed the proceedings. The Court further notes that some of the adjournments of the appellate proceedings were also the responsibility of the Applicant. In these circumstances, the Court considers that the period to finalise the Applicant's trial and appellate proceedings cannot be found to be unreasonable and, therefore, holds that the Respondent State did not violate the Applicant's right to be tried within a reasonable time, guaranteed under Article 7(1)(d) of the Charter.
82. As to the time taken between the Applicant's arrest and his arraignment in court, this Court notes Section 32 of the Criminal Procedure Act of the Respondent State, which provides that when the offence appears to be of a serious nature, the person held in custody shall be brought before a court as soon as practicable.²¹ In this instant matter, considering that the

²¹ Section 32 of the Criminal Procedure Act provides that "(1) Where any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which he is brought may, in any case, and shall if it does not appear practicable to bring him before an appropriate court within twenty four hours after he was so taken into custody, inquire into the case and, unless the offence appears to that officer to be of a serious nature, release the person on his executing a bond with or without sureties, for a reasonable amount to appear before a court at a time and place to be named in the bond; but where he is retained in custody, he shall be brought before a court as soon as practicable. (2) Where any person has been taken into custody

Applicant was charged with armed robbery, which is a serious offence, that he was apprehended in hot pursuit and that the trial effectively also started on 10 January 2014, the Court finds that in these particular circumstances that the period taken to arraign the Applicant in court is not unreasonable and, therefore, holds that the Respondent State did not violate the Applicant's right to be tried within reasonable time, protected under Article 7(1)(d) of the Charter.

B. Alleged violation of the right to dignity and prohibition against torture, degrading and inhuman treatment

83. The Applicant alleges that his right to dignity and prohibition against torture, degrading and inhuman treatment, protected under Article 5 of the Charter, was violated in relation to his arrest, which according to him was unlawful. The Applicant claims that he surrendered but that the police used violence when they arrested him and shot him.

*

84. The Respondent State submits that the Applicant was not unlawfully arrested nor subjected to torture during the arrest. The Respondent State, in referring to the evidence adduced during trial, noted that the Applicant resisted arrest which made the police to use reasonable force to effect the same. As per the record of the trial court, the Respondent State asserts that "a bullet was shot in the air to warn the Applicant, (who was armed) to stop running to no avail". According to the Respondent State, "in order to effect arrest, the Applicant was shot in the leg and did not sustain serious injuries since he was able to enter appearance in Court on 10th January 2024, few days after arrest and did not inform the Court of being sick".

without a warrant for an offence punishable with death, he shall be brought before a court as soon as practicable. (3) Where any person is arrested under a warrant of arrest, he shall be brought before a court as soon as practicable. (4) Notwithstanding anything contained in subsections (1), (2) and (3), an officer in charge of a police station may release a person arrested on suspicion of committing any offence, if after due police inquiry insufficient evidence is, in his opinion, disclosed on which to proceed with a charge".

85. The Respondent State contends that the use of reasonable force by law enforcement is permitted under international human rights standards. Since reasonable force was used to effect the Applicant's arrest, it is the Respondent State's submission that it cannot be faulted for the same.

86. Article 5 of the Charter provides that:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

87. The Court notes that the Applicant alleges that his arrest was unlawful because the police used torture when arresting him. The Court also takes note that the Respondent State's law, under Section 21 of the Criminal Procedure Act, permits police officers to use force during an arrest, provided that no more force is used or that the person is not subjected to greater indignity than is necessary, to make the arrest or to prevent the escape of the person after he has been arrested.²²
88. The record, the Court notes, indicates that the Applicant tried to evade arrest by running away and that he continued running even after a warning shot was fired and that he was eventually shot in the leg in order to be apprehended. The Court, furthermore, observes that the Applicant did not provide proof or substantiate the allegation that excessive force was used

²² Section 21 of the Criminal Procedure Act provides that "(1) A police officer or other person shall not, in the course of arresting a person, use more force or subject the person to greater indignity than is necessary to make the arrest or to prevent the escape of the person after he has been arrested. (2) Without limiting the application of subsection (1), a police officer shall not, in the course of arresting a person, do an act likely to cause the death of that person, unless the police officer believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to some other person".

or that he was treated with greater indignity than necessary at the time of his arrest.

89. In these circumstances, the Court holds that the Respondent State did not violate the Applicant's right to dignity and prohibition against torture, degrading and inhuman treatment, guaranteed under Article 5 of the Charter, with regard to the force used by the police during his arrest.

C. Alleged violation of the right to liberty

90. The Applicant claims that the Respondent State violated his right to liberty, protected under Article 6 of the Charter, as he was arbitrarily arrested, detained in police custody and finally imprisoned for 30 years, without any reasonable cause and based on unproven facts.

*

91. The Respondent State contends that the Applicant has deprived himself of his own liberty the moment he committed the offence of armed robbery and after he was subjected to criminal proceedings which led to his conviction. The Respondent State submits that the right to liberty is not absolute as it can be limited in accordance with the law. The Respondent State maintains that the Applicant was lawfully arrested, charged, tried, convicted and sentenced to imprisonment, and, therefore, it did not violate the provisions of Article 6 of the Charter.

92. Article 6 of the Charter provides that:

“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”.

93. The Court notes from the record and the determination of the foregoing allegations of violations of rights that the Applicant did not provide evidence to show and prove to the Court that he was arbitrarily arrested, detained and imprisoned, amounting to a violation of his right to liberty under Article 6 of the Charter.
94. In these circumstances, the Court finds there is no basis to find a violation and holds that the Respondent State did not violate the Applicant's right to liberty, protected under Article 6 of the Charter, with regard to his arrest, detention and imprisonment.

VIII. REPARATIONS

95. The Court notes that Article 27(1) of the Protocol stipulates that "[i]f the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation".
96. Having found that the Respondent State has not violated any of the Applicant's rights, the Court dismisses the Applicant's prayers for reparations.

IX. COSTS

97. The Applicant did not make any submissions on costs.
98. The Respondent State prays that costs be borne by the Applicant.

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

100. In the instant case, the Court notes that Parties are not required to pay for any processes before it. Furthermore, the Respondent State does not provide evidence to support its 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.

X. OPERATIVE PART

101. For these reasons,

THE COURT,

Unanimously,

On jurisdiction

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

On admissibility

- iii. *Dismisses* the objection to the admissibility of the Application;
- iv. *Declares* that the Application is admissible.

On merits

- v. *Holds* that the Respondent State did not violate the Applicant’s right to be heard under Article 7(1) of the Charter regarding the manner in which the proceedings before the domestic courts were conducted, including the consideration of the evidence;

- vi. *Finds* that the Respondent State has not violated the Applicant's right to be tried within a reasonable time under Article 7(1)(d) of the Charter with regard to the total duration of the time it took to finalise his trial and appellate proceedings as well as the time it took between his arrest and his arraignment in court;
- vii. *Holds* that the Respondent State did not violate the Applicant's right to dignity and prohibition against torture, degrading and inhuman treatment, under Article 5 of the Charter, with regard to the force used by the police during his arrest;
- viii. *Holds* that the Respondent State did not violate the Applicant's right to liberty, protected under Article 6 of the Charter, regarding his arrest, detention and imprisonment.

On reparations

- ix. *Dismisses* the prayers for reparations.

On costs

- x. *Orders* each Party to 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; *Anukam.*

Dumisa B. NTSEBEZA, Judge; *Ntsebeza.*

Modibo SACKO, Judge; *Modibo Sacko.*

Dennis D. ADJEI, Judge; *Adjai.*

Duncan GASWAGA, Judge; *Gaswaga.*

and Grace W. KAKAI, Deputy Registrar. *Kakai.*

In accordance with Article 28(7) of the Protocol and Rule 70(2) of the Rules of Court, the separate opinion of Judge Rafaâ BEN ACHOUR is attached 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 text being authoritative.

