

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

SONG LEI

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 066/2019

JUDGMENT

6 MARCH 2026



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The Court composed of: Blaise TCHIKAYA, President; Chafika BENSOUOLA 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:

Song LEI

Self-represented

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. Song Lei (hereinafter referred to as “the Applicant”) is a businessman and a national of the People’s Republic of China residing in the United Republic of Tanzania. At the time of filing this Application, he was incarcerated at Ukonga Central Prison, Dar es Salaam, having been tried, convicted and sentenced to 20 years imprisonment, among others, for unlawful dealing in trophies and unlawful possession of government trophy, specifically rhinoceros’ horns. He alleges violation of his rights during the proceedings before the Tanzanian courts.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration provided 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 comes into effect one year after its deposit, in this case, on 22 November 2020.²

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

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that on 6 November 2015, the Applicant was arrested with three other Chinese men after they had crossed the border into Tanzania from Malawi, and the border police had found in a secret compartment of their car 11 pieces of rhinoceros horns, valued at Four Hundred Eighteen Thousand United States dollars (USD 418.000,00).
4. The Applicant, who is the owner of the said car, together with the three other Chinese men were charged in the Magistrate's Court with three counts under the Economic and Organized Crime Control Act (2002) and the Wildlife Conservation Act No. 5 (2009) for: (i) "leading organized crime", (ii) "unlawful dealing in trophies", and (iii) "unlawful possession of government trophy".
5. On 17 December 2015, all four men were convicted as charged and sentenced, on the first count, to 15 years in prison; on the second count, to a fine of Eight Hundred and Thirty-Six Thousand (836,000.00) USD (twice the value of the trophies) or three years imprisonment, and on the third count, to 20 years in prison and a fine of Four Million One Hundred and Eighty Thousand (4,180,000.00) USD (ten times the value of the trophy).
6. On 3 February 2016, all of them appealed against the conviction and sentence to the High Court of Tanzania sitting in Mbeya.
7. On 8 November 2016, the High Court of Tanzania acquitted the three other Chinese men on all three counts but upheld the second and third count against the Applicant. The Applicant and the Director of Public Prosecutions of Tanzania appealed against the decision of the High Court before the Court of Appeal of Tanzania.

8. On 30 August 2019, the Court of Appeal of Tanzania upheld the High Court's judgment.

B. Alleged violations

9. The Applicant alleges violation of the following rights:
 - i. The right to equality before the law and to equal protection of the law under Article 3(1) and (2) of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter");
 - ii. The right to dignity under Article 5 of the Charter;
 - iii. The right to a fair trial under Article 7 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Application was filed on 17 December 2019. On 14 January 2020, the Court requested the Applicant to clarify his Application by providing a clearer explanation of the alleged human rights violations.
11. On 11 February 2020, the Applicant submitted additional documents. On 4 May 2020, after reviewing the documents submitted by the Applicant, the Court further requested him to explain in greater detail how his human rights were allegedly violated. He was also requested to provide further details on the reparations sought, together with any supporting documentation, as necessary. On 10 July 2020, the Applicant filed additional documents.
12. On 5 November 2020, the Application was served on the Respondent State. After various extensions of time, on 31 March 2022, 29 March 2023 and 12 February 2024, the Respondent State filed its Response on 21 February 2025, which was transmitted to the Applicant for his Reply. The Applicant did not file a Reply.
13. Pleadings were closed on 14 August 2025 and the Parties duly notified.

IV. PRAYERS OF THE PARTIES

14. The Applicant prays the Court to:

- i. Allow his Application;
- ii. Quash the whole proceedings of the national court which violated the Applicant's human rights;
- iii. Set aside the conviction and sentence;
- iv. Order the release of the Applicant from prison;
- v. Order the Respondent State to compensate the Applicant; and
- vi. Allow the preparation of the "compensate documents before the court during the hearing [sic]".

15. The Respondent State prays the Court to:

- i. Declare that the Court is not vested with jurisdiction to determine the Application;
- ii. Declare that the Application does not meet 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 did not violate 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 merit;
- vii. Dismiss the Application;
- viii. Order the Applicant to bear the costs;
- ix. Grant any other relief that it Court deems 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 being seized to evaluate evidence and, therefore, to act as an appellate court whereas it lacks such jurisdiction. According to the Respondent State, the Applicant is inviting this Court to go beyond its limited mandate in evaluating evidence to the extent that it is being prayed to quash the entire proceedings before the trial and appellate courts. The Respondent State claims, however, that the Applicant does not demonstrate any link between the faulted proceedings of its domestic courts and the alleged human rights violation. It, therefore, submits that this Court lacks jurisdiction to determine the matter.

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21. The Applicant did not respond to the Respondent State's claims.

22. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided the rights of which 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 violation of Articles 3, 5 and 7 of the Charter - an instrument 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.

24. Specifically with regard to the objection to the Court's exercise of 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.

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.

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.

25. The Court takes note of the Respondent State's objection with regard to the allegation that the Applicant does not demonstrate any link between the faulted proceedings of its domestic courts and the alleged human rights violation. The Court holds, however, that it is an issue to be dealt with on the merits and not in relation to the determination of its jurisdiction.
26. The Court further notes that the Respondent State's objection concerns the claim that the Court lacks jurisdiction to quash the entire proceedings before the trial and appellate 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 proceedings in the national courts null and void, an order to annul a conviction and sentence, and an order for the release of an Applicant from prison, provided the alleged violation has been established.⁷
27. For these reasons, the Court dismisses the objection raised by the Respondent State and holds that it has material jurisdiction in this Application.

B. Other aspects of jurisdiction

28. The Court observes that no objection has been raised with respect to its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.
29. 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 and to the Protocol on 10 February 2006;

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

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.

30. 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.
31. 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.
32. In light of all the above, the Court holds that it has jurisdiction to determine the present Application.

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

⁹ *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 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.

VI. ADMISSIBILITY

33. 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”.
34. 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.”
35. 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.

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

A. Objection based on non-exhaustion of local remedies

37. The Respondent State argues that the Applicant did not exhaust 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 the Constitution of the Respondent State and Section 4 of the Basic Rights and Duties Enforcement Act. For this reason, the Respondent State submits that this Application should be declared inadmissible for failure to meet the admissibility requirement in relation to exhaustion of available local remedies.

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38. The Applicant submits that he received a final decision from the Court of Appeal, the highest court in the Respondent state, and, therefore, that he exhausted the local remedies.

39. 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

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

40. 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
41. 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 as arising from his trial and appeals.
42. 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
43. 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.
44. 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 relation to the present Application.

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

¹³ *Ibid*, §§ 63-65.

B. Other admissibility requirements

45. 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.
46. 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.
47. 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) thereof, is to promote and protect human and peoples' rights. The Application also does not contain any claim or prayer that is incompatible with any 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.
48. 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.
49. The Court further finds that the Application is not based exclusively on news disseminated through the 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.
50. In relation to the requirement regarding the filing of 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

51. 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 17 December 2019, so that a period of three months and 17 days thus elapsed. The Court holds that the period of 3 months and 17 days that it took the Applicant to file this Application is manifestly reasonable within the meaning of Rule 50(2)(f).¹⁵
52. 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.
53. 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

54. The Applicant alleges that the Respondent State violated his rights to equality before the law, equal protection of the law, to dignity and a fair trial, protected under Articles 3(1), (2), 5 and 7 of the Charter, respectively. Taking into consideration his submissions, the Court considers that the main issue in this Application is the alleged violation of the Applicant’s 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*, ACtHPR, Application No. 065/2019, Judgment of 29 March 2021, §§ 86-87.

to have his cause heard, protected under Article 7(1) of the Charter. Therefore, the Court will first consider this allegation before assessing the alleged violations of his right to dignity as well as his rights to equality before the law and to equal protection of the law, under Articles 5 and 3 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 different grievances against the domestic courts, actions or omissions of which, he claims, violated his rights. These grievances concern (i) the evidence upon which the conviction was based, (ii) the competence of the interpreter, and (iii) the denial of bail.

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

56. The Applicant alleges that the Respondent State's courts erred in convicting him based on planted evidence, an improperly constituted record of appeal, the wrong legal basis, pure suspicion, unreliable witnesses, erroneous evidence with respect to ownership of the car in which the rhino horns were found, lack of witnesses to prove his involvement in handling the rhino horns and a faulty charge sheet.

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57. On its part, the Respondent State objects to all the allegations by the Applicant and submits that it had proven its case beyond reasonable doubt. In its Response, the Respondent State proceeded to address each of the Applicant's allegations and, primarily in reference to the trial and appellate courts' findings, contested each of his claims with regard to the conduct of the proceedings and the evaluation of the evidence.

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

59. The Court has previously held that:

domestic courts enjoy a wide margin of appreciation in evaluating the probative value of particular 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

60. 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

61. In the instant case, the Applicant alleges that the domestic proceedings leading to his conviction and sentence were marred by irregularities, including the consideration of the evidence.

62. 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 of a criminal offence, and in particular a heavy prison sentence, should be based on strong and credible evidence. That is the purport of the right to presumption of innocence also enshrined in Article 7 of the Charter. ”.¹⁸

63. 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

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.

credibility of the evidence as well as the alleged procedural irregularities, and found that the charges against the Applicant were proven beyond reasonable doubt.

64. Accordingly, after close 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 did not violate his right to be heard, protected under Article 7(1) of the Charter.

ii. Allegation relating to the competence of the interpreter

65. The Applicant further challenges the capacity of the interpreter and the latter's appointment without consulting him.

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66. The Respondent State submits that this issue was never raised by the Applicant which means that raising it now is an afterthought which cannot be entertained. Moreover, the Respondent State asserts that the interpreter performed his duties under oath and that the Applicant was comfortable with that at all times.

67. The Court observes that while Article 7(1)(c) of the Charter does not explicitly provide for the right to be assisted by an interpreter, the said right is expressly guaranteed in Article 14(3)(a) and (f) of the International Covenant on Civil and Political Rights (ICCPR) which provides that "... everyone shall be entitled to ... (a) be promptly informed and in detail in a language which he understands of the nature and cause of the charge

against him; and (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.¹⁹

68. This Court has held in *Armand Guehi v. United Republic of Tanzania* that every accused person has the right to an interpreter which is an aspect of fair trial under Article 7(1)(c) of the Charter read jointly with Article 14(3)(a) of the ICCPR.²⁰ The Court has also held that in cases where the accused cannot understand or speak the language that is being used in court, he or she is entitled to an interpreter. Further, if the accused person is represented by counsel, the need for interpretation should be communicated to the court.²¹
69. The same purpose is inherent in the Criminal Procedure Act of the Respondent State. Section 211(1) of the said Act provides that “whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language understood by him.”
70. It follows that the right to an interpreter, as it arises from these provisions, is not necessarily for an accused person to be provided interpretation in his own language but rather in any language that he understands. Therein lies the rationale of this Court’s conclusion in *Guehi v. Tanzania* that the purpose of ensuring that the accused person understands the language used by the trial court is to be aware of the charges brought against him and participate in the proceedings without necessarily having a full mastery of the language used.²²

¹⁹ Ratified by the Respondent State on 11 June 1976.

²⁰ *Guehi v. Tanzania* (merits and reparations), *supra*, § 73.

²¹ *Henerico v. Tanzania* (merits and reparations), *supra*, § 128 and *Yahaya Zumo Makame v. United Republic of Tanzania* ACtHPR, Application No. 023/2016, Judgment of 25 June 2021 (merits and reparations), § 93; *Nzigiyimana Zabron v. United Republic of Tanzania*, AfCHPR, Application No. 051/2016, Judgment of 4 June 2024 (merits and reparation), § 103.

²² *Guehi v. Tanzania*, *supra*, §§ 73-79. See also, *Husain v. Italy*, ECHR, Application 18913/03, Judgment of 24 February 2005.

71. In the instant case, it emerges from the record that an interpreter was provided to interpret from Kiswahili to Chinese and vice versa. The record also shows that the Magistrate's Court addressed the issue of language whereby the Magistrate also confirmed that the Applicant does understand English and that the second accused in the trial proceedings also understands English and Kiswahili.²³ The record also shows that the Applicant was represented by counsel during the trial and appellate proceedings. It is also apparent from the record that the Applicant did not raise the issue of interpreter's choice and inadequate interpretation as any of his grounds for appeal.
72. Against these facts, the reasonable conclusion is that the Applicant had the requisite understanding to make decisions on whether and how he should participate in the proceedings and possibly object to any part thereof.
73. In light of the above, the Court finds that the allegation regarding the choice of the interpreter and his alleged lack of competence during the proceedings referenced did not affect the Applicant's ability to defend himself. Consequently, the Court dismisses the allegation and holds that the Respondent State did not violate Article 7(1)(c) of the Charter, read jointly with Article 14(3)(a) and (f) of the ICCPR, on the right to defence with regard to the right to be assisted by an interpreter.

iii. Allegation relating to the denial of bail

74. The Applicant faults the Respondent State for denying him bail because he and his co-accused are foreigners.

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75. The Respondent State submits that bail is granted according to the conditions stipulated in the law and that the Magistrate's Court advanced

²³ Court of Resident Magistrate of Mbeya, Economic Case no. 06 of 2015, *Republic v. Song Lei and 3 others*, page 177.

the rationale that “as it was held in different High Court decisions in this scenario, that granting bail to accused person who is facing a very serious charge, which attracts severe sentence is just an extreme risk”. The Respondent State also maintains that the Court had observed that securing the presence of the accused during the whole trial is vital. The Respondent State further argues that the Applicant had the opportunity to appeal the Ruling that denied him bail but did not do so, which shows that he was satisfied.

76. The Court observes that the Charter does not explicitly guarantee the right to bail in any of its provisions. However, the International Covenant on Civil and Political Rights (ICCPR), in Article 9(3), provides that:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgments.²⁴

77. This provision affirms that the detention of individuals accused of having committed crimes should be an exceptional measure. Those awaiting trial ought to be granted bail unless specific circumstances necessitate detention, such as the need to uphold the integrity of the trial and prevent the risk of absconding.²⁵

78. The Court emphasises that the decision as to whether to grant bail to an accused demands an individualised assessment, taking into account the unique facts of each case and the specific circumstances of the Applicant.

²⁴ Article 9(3), the International Covenant on Civil and Political Rights (1966).

²⁵ *John Mwita v. United Republic of Tanzania*, AfCHPR, Application No. 044/2016, Judgment of 13 February 2024, § 113.

In such assessment, while considering the nature of the charges against an accused is relevant, it should not be the sole determining factor for the denial or granting of bail. In essence, granting or denying an accused person bail should not be a legally predetermined outcome solely based on the nature of the crime.²⁶

79. In its jurisprudence, the Court has acknowledged that the right to bail is intertwined with other rights, including the right to liberty, the right to equality and non-discrimination, right to be heard, the presumption of innocence and the right to have adequate time and facility to prepare one's defence.²⁷ Violating the right to bail is, therefore, not an isolated transgression; rather, it constitutes a simultaneous infringement of several other fundamental rights.
80. The Court further notes that there may be circumstances warranting the denial of bail. In the instant case, the Court observes that the Magistrate's Court, in its Ruling delivered on 24 November 2015, duly considered different reasons for denying bail to the Applicant and his co-accused, including the severity of the charge against the Applicant, the severity of the sentence it may attract, the necessity to guarantee the presence of the Applicant during the whole trial, as well as the risk of abscondment and the devastating consequences on the case should this materialise.
81. In view of the foregoing, the Court finds that the domestic court's decision to deny bail to the Applicant does not reveal any manifest errors requiring its intervention. The Court, therefore, dismisses the Applicant's allegation and holds that the Respondent State did not violate the Applicant's right to be heard, protected under Article 7(1) of the Charter, read jointly with Article 9(3) of the ICCPR, concerning the Applicant's right to bail.

²⁶ *John Mwita v. United Republic of Tanzania*, AfCHPR, Application No. 044/2016, Judgment of 13 February 2024, § 114.

²⁷ *Legal & Human Rights Centre and Tanzania Human Rights Defenders Coalition v. United Republic of Tanzania*, ACTHPR, Application No. 039/2020, Judgment of 13 June 2023 (merits and reparations).

B. Alleged violation of the right to dignity

82. The Applicant alleges that to be sentenced to 20 years imprisonment and a fine of USD 4,180,000, which led him to be separated from his family and destroyed “his economy”, is a violation of his right to dignity, protected under Article 5 of the Charter. He contends that his case was an “economic case” (*sic*) and challenges the rationale of the domestic court to sentence him to 20 years in prison and a fine, instead of a prison sentence or a fine. He alleges that this sentence appears to be a life sentence, whereby he is expected to serve 20 years in prison and again pay a fine.

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83. The Respondent State submits that Article 5 of the Charter was not violated as the Applicant was convicted and sentenced justly by a court of competent jurisdiction (*sic*) according to the law. The Respondent State further argues that the Applicant is just like any other person and is obliged to abide by the law of the land, and that the Applicant should be held accountable if he falls foul of the law. The Respondent State also avers that the issue of the sentence was never raised as a ground of appeal for determination by the Court of Appeal, which means that the Applicant agreed with the sentence in the event that the conviction was confirmed.

84. 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.

85. The Court notes that the burden of proof for a human rights violation lies with the Applicant, unless the Court decides otherwise.²⁸ In the instant matter, the Court observes that the Applicant alleges that the sentence imposed by the Respondent State violated his right to dignity protected under Article 5 of the Charter, without expounding the basis of the alleged violation.
86. The Court notes that the trial court imposed the sentence in accordance with the law, as provided in the Economic and Organised Crimes Control Act and the Wildlife Conservation Act. The Court further notes that following his appeal before the High Court, the Applicant was acquitted on the first count and that only the conviction, sentence and orders entered against him in respect of the second and third counts were upheld.
87. From the record, the Court further observes that in determining the sentence, the trial court took into consideration that:

Currently wildlife animals are hunted and killed in a great number, and the government and friend countries (*sic*) are spending its economy in protecting these animals, and rhinoceroses are some animals which are in group of endangered animals in an extinction species (*sic*) so if the government lay down its efforts to protect and conserve these animals, I think it is a duty of court to stretch its hands and support the government on punishing the offence, in order to deter the convicts themselves and other suspects who attempt to commit such offences.

88. The trial court further held that “[i]t is certain that these accused are very young but these offences are very serious and it is a high risk to commit them due to their severity of sentences. Because highly benefit attracts highly risk [*sic*].” Having said so, the trial court judge passed sentence as follows: On the second count (unlawful dealing in trophies), “[u]nder Section

²⁸ *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.

83(2) and 84(1) of the Wildlife Conservation Act, the accused are sentenced to pay a fine of USD 836,000. Twice the value of the trophies OR to serve 3 years term of imprisonment.” On the third Count (unlawful possession of government trophy), “[u]nder Section 86(1)(2)(c)(ii) of the Wildlife Conservation Act, [the Applicant is] sentenced to serve twenty (20) years term of imprisonment and pay a fine of USD 4,180,000.”

89. The Court further notes that Section 86(1)(2)(c)(ii) of the Wildlife Conservation Act provides that “where the value of the trophy which is the subject matter of the charge exceeds one million shillings, to imprisonment for a term of not less than twenty-years but not exceeding thirty years and the court may, in addition thereto, impose a fine not exceeding five million shillings or ten times the value of the trophy, whichever is larger amount.”
90. Accordingly, the Court notes that some discretion is indeed bestowed on domestic courts with regard to the length of the prison sentence (between twenty and thirty years) and whether or not to impose a fine in addition to imprisonment. The Court further takes into consideration that the domestic court considered the gravity of the offence in passing the sentence, as duly provided by law.
91. In these circumstances, the Court finds that the Applicant has failed to prove the alleged violation and holds that the Respondent State did not violate his right to dignity, guaranteed in Article 5 of the Charter, with regard to the sentence imposed on him.

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

92. The Applicant alleges that the Respondent State violated his rights guaranteed by Article 3 of the Charter, which provides for the right to equality before the law and the right to equal protection of the law.

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93. The Respondent State contends that the Applicant is just like any other person and is equal before the law as per Article 3(1) of the Charter. The Respondent State further maintains that the Applicant failed to demonstrate how its impugned actions resulted in the alleged violations of his human rights. The Respondent State submits that since the Applicant failed to demonstrate the same, the Court should disregard his claims for being meritless.

94. The Court reiterates that the burden of proof for human rights violation lies with the applicant, unless the Court decides otherwise.²⁹ In the instant Application, the Applicant alleges that the Respondent State violated his rights to equality before the law and equal protection of the law protected under Article 3(1) and (2) of the Charter, without expounding the basis of the alleged violation. The Court further notes that the Applicant was able to make use of all the legal remedies available to him and that he was able to defend himself in accordance with the protections provided by law.³⁰

95. In these circumstances, the Court finds that the Applicant has failed to prove the alleged violation and holds that the Respondent State did not violate his rights to equality before the law and equal protection of the law protected under Article 3 of the Charter.

²⁹ *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.

³⁰ *Tembo Hussein v. United Republic of Tanzania*, AfCHPR, Application No. 001/2018, Judgment of 26 June 2025 (merits and reparations), § 73.

VIII. REPARATIONS

96. 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.”
97. Having found that the Respondent State did not violate any of the Applicant’s rights, the Court dismisses the Applicant’s prayers for reparations.

IX. COSTS

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

100. 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”.
101. 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

102. 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. *Holds* that the Respondent State did not violate the Applicant's right under Article 7(1)(c) of the Charter, read jointly with Article 14(3)(a) and (f) of the ICCPR, on the right to defence with regard to the right to be assisted by an interpreter;
- vii. *Holds* that the Respondent State did not violate the Applicant's right to be heard, protected under Article 7(1) of the Charter, read jointly with Article 9(3) of the ICCPR, concerning the Applicant's right to bail;
- viii. *Holds* that the Respondent State did not violate the Applicant's right to dignity, under Article 5 of the Charter, with regard to the sentence imposed on him;
- ix. *Holds* that the Respondent State did not violate the Applicant's right to equality before the law and to equal protection of the law,

under Article 3(1) and (2) of the Charter in respect of the unsubstantiated allegation by the Applicant to that effect.

On reparations

- x. *Dismisses* the prayers for reparations.

On costs

- xi. *Orders* that each Party shall bear its own costs.

Signed:

Blaise TCHIKAYA, President; 

Chafika BENSAOULA, Vice President; 

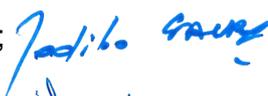
Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

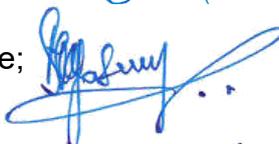
Tujilane R. CHIZUMILA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. NTSEBEZA, Judge; 

Modibo SACKO, Judge; 

Dennis D. ADJEI, Judge; 

Duncan GASWAGA, Judge; 

and Grace W. KAKAI, Deputy Registrar. 

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

