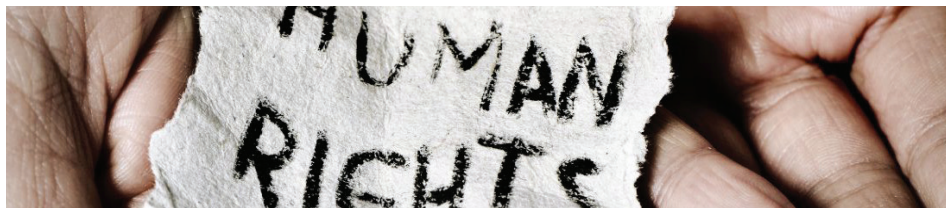


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African Court on Human and Peoples' Rights issues record 7 judgments

- Tanzania ordered to remove mandatory imposition of the death penalty from its penal code and allow judicial officers discretion
- Tanzania failed to demonstrate that Applicant not Tanzanian by birth, ordered immediate release from detention
- Court rejects prayer to release convicted Tanzanian Applicants sentenced to 30 years, holds sentencing by Tanzanian Courts proper
- Orders Rwanda to reinstate Applicant's passport within 3 months
- Significant delay in filing application leads to inadmissibility, rules in favour of Tanzania
- Dismissed allegation that the Court of Appeal of Tanzania violated Applicant's right to non-discrimination
- All States to report back to the Court on status of implementation within 6 months

Today, 28 November, 2019, the African Court on Human and Peoples' Rights (African Court) sitting in Zanzibar has delivered seven judgments on various matters touching upon diverse issues on human and peoples' rights across the continent. 5 of the Applications were filed against Tanzania, 1 against Benin and 1 against Rwanda.

The African Court is a continental Court established by Member States of the African Union to ensure the protection of human and peoples' rights in Africa. The African Charter on Human and Peoples' Rights (the Charter) provides a framework within which the African Court was created.

Ally Rajabu and others v United Republic of Tanzania, Application No. 007/2015

Background

The Applicants were arrested for killing and charged with murder at the High Court of Tanzania in Arusha. The High Court found the Applicants guilty and sentenced them to death in criminal case No. 20 of 2008. Being aggrieved with the judgment, the Applicants appealed unsuccessfully to the Court of Appeal.

After failure of the Appeal, the Applicants filed an Application for Review which was still pending at the Court of Appeal when they filed the current Application at the African Court. The Applicants stated that they were appealing to the African Court against the convictions and sentences passed against them by the Tanzanian Courts. The Applicants alleged that the decision against them was based on manifest errors on the records to the extent that the evidence on their identification at the scene of the crime was not satisfactory due to the discrepancies among the prosecution witnesses.

Further it was alleged that during their trial there was non-compliance with some of the procedures such as procedure on Preliminary Hearing provided by section 192(5) of the Criminal Procedure Act as well as failure of the prosecution to call important witness. The Applicants request the Court to acquit them.

Decision

- Finds that the Respondent State has not violated the Applicant's Right to be heard under Article 7(1) of the Charter

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- Finds that the Respondent State has not violated the Applicant's right to retrial by a competent Court under Article 7(1)(a) of the Charter
- Finds that the Respondent State has not violated the Applicant's right for retrial within a reasonable time protected under Article 7(1)(b) of the Charter
- Finds that the Respondent State has violated the Applicant's right to life guaranteed under Article 4 of the Charter in relation to provision in the Penal Code for the mandatory position of the death penalty as it removes the discretion of the judicial officer
- Finds that the Respondent State has violated the right to dignity protected under Article 5 of the Charter in relation to the position of the execution of the death penalty imposed in a mandatory manner
- Grants free of tax TZS 4M to each of the Applicants, to be paid within 6 months
- Doesn't grant prayer for conviction to be quashed
- Doesn't grant prayer for no repetition of violation in respect of the Applicants
- Orders the Respondent to take cognizance of this judgment within 1 year to remove the mandatory imposition of the death penalty from its penal code, as it takes away discretion of the judicial officer
- Orders Respondent State to take cognizance through its internal processes within 1 year, for the rehearing of the case of sentencing of the Applicants through a procedure that doesn't allow the mandatory procedure of the death sentence as opposed to full discretion of the judicial officer
- Orders this judgment to be published on the website of the Judiciary and the Ministry of Justice and Constitutional Affairs and should be accessible for at least 1 year
- Orders Respondent State to submit a report within 6 months on implementation, and then every 6 months until full implementation

Robert John Pennesis v United Republic of Tanzania, Application No. 013/2015

Background

The Applicant, Robert John Penesis is an individual who claims to be a Tanzanian citizen. In January 2010, he was the subject of legal proceedings for illegal entry and presence in the territory of the Respondent State. He was subsequently sentenced to a fine of TZS 80,000 or, in default, to two years in prison, a sentence subsequently upheld by both the High Court and the Court of Appeal. The Applicant maintains that he is Tanzanian by birth just like his parents. The Applicant then on 2 June 2015, filed with this Court an Application alleging that the Respondent State has violated his right to nationality, his right to freedom of movement and his right not to be unlawfully detained. The Applicant also alleges the violation of the Tanzanian Constitution, 'Article 59(1) of the Additional Protocol to the 1949 Geneva Convention' and Articles 1 and 12(1) and (2) of the Charter. The Applicant prayed to the Court to declare that he is a citizen of Tanzania and also to order his release from detention. Furthermore, the Applicant claimed reparation for the material and moral prejudice suffered by himself and by his mother as an indirect victim.

Decision

- Declares that the Respondent State has violated Applicant's right to Tanzanian nationality having failed to demonstrate that he was not a Tanzanian by birth
- Declares that the Respondent State has violated Article 6 of Charter on the right to liberty and to security of the person
- Declares that the Respondent State has violated Article 12 of Charter on the right of freedom of movement and residence on account of Applicant's arrest and detention

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- Declares that the Respondent State violated Article 1 of the Charter on reparation
- Dismisses the Applicants request regarding material prejudice for lack of evidence
- Orders Respondent State to pay TZS 10M for illegal detention to date, and further 300,000 for each month of illegal detention from this decision
- Orders the Respondent state to pay the Applicant's mother TZS 5M for moral prejudices suffered
- Orders immediate release of Applicant
- Orders tax free payments to be made within 6 months of this judgment, otherwise interest to be imposed on arrears
- Orders Respondent State to submit to Court a report on implementation of Judgment within 6 months

Jibu Amir Mussa and Said Ally Mangaya v United Republic of Tanzania, Application No. 014/2015

Background

The Applicants are nationals of the United Republic of Tanzania and are currently serving a prison sentence of 30 years, after being convicted of the offence of armed robbery contrary to Sections 285 and 286 of the Penal Code by the District Court of Temeke on 25 February 2004.

The Applicants alleged that the Respondent State violated their rights under Articles 1, 2, 3, 4, 5, 6 and 7(1)(c) and (2) of the Charter by pronouncing an 'improper' sentence on them, failing to inform them of their right to Counsel and by denying them free legal assistance during the trial and appellate proceedings. They thus sought reparations, particularly an order for release from prison and monetary compensation to remedy the alleged violations.

Decision

- On whether sentence imposed on the Applicants was illegal and thus violated Applicants' rights under Article 7(2) of the Charter, Court found that the penalty for armed robbery in Tanzania is 30 years imprisonment hence Applicants' were properly sentenced and their rights were not violated in this regard
- On free legal assistance during trial and appeals, Court found that the Respondent State should have provided the Applicants with free legal assistance and therefore held that the Applicants' right under Article 7(1)(c) of the Charter was violated
- On Applicants' right to receive information, Court observed that this allegation relates more to the right to be informed of the right to Counsel than to the right to information. The Court found that the Respondent State violated the Applicants' right to be informed of their right to Counsel by failing to inform them as such prior to, or in the course of their trial and appeals
- Awarded Applicants Tanzanian Shillings 350,000 each, to be paid tax free within 6 months and thereafter interest to be imposed
- Rejected prayer to release the Applicants as such remedy only available in exceptional cases where the detention of an Applicant is deemed to be based on arbitrary grounds or that the continued detention would occasion a miscarriage of justice, which were not established in this case
- Respondent State to submit report on status of implementation within 6 months

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Kennedy Gihana and others v Republic of Rwanda, Application No. 017/2015

Background

The 7 Applicants, Messrs Kennedy Alfred Nurudii Gihana and 6 others are all of Rwandese origin, who at the time of filing of the Application were living in South Africa.

The Applicants alleged that the Republic of Rwanda, had since 14 May 2012, invalidated their passports without officially notifying them or giving them an opportunity to appeal the decision of the said invalidation.

The Applicants alleged that the invalidation of their passports was an arbitrary deprivation of their nationality, that it rendered them stateless and significantly impacted on the enjoyment of a number of their universally accepted fundamental human rights, specifically, the rights to: participation in political life, freedom of movement, citizenship, liberty, family life and work, protected under Articles 6, 12, 13 and 18 of the Charter. The Applicants prayed to the Court to order reparations, particularly the reinstatement of their passports and compensation.

Decision

- Finds that the alleged violation of right to liberty, right to work and right to family life under Article 15 have not been established
- Finds that the Respondent State has violated the right to freedom of movement and right to political participation as a consequence of arbitrarily revocation of the Applicant's passport
- Grants Applicants Rwandan Franks 465,000 tax free for moral damage suffered, to be paid within 6 months and interest to be charged thereafter
- Orders Respondent state to reinstate the Applicant's passport within 3 months
- Orders Respondent state to report on status of implementation within 6 months

Livinus Daudi Manyuka v United Republic of Tanzania, Application No. 020/2015

Background

Mr Livinus Daudi Manyuka is a national of the United Republic of Tanzania who, at the time of filing the Application, was a prisoner serving a sentence of 30 years imprisonment for robbery with violence, following his conviction by the District Court at Mbinga, Ruvuma Region, on 15 May 2000.

The Applicant alleged that the Respondent State violated Article 2 of the Charter by unlawfully imprisoning him for a non-existent offence hence curtailing his freedom of movement, association and of access to other amenities of life. The Applicant also argued that the enhancement of his sentence from 20 years to 30 years imprisonment by the High Court of Tanzania was an excessive order which violated his right to equality before the law guaranteed under Article 3 of the Charter. The Applicant further alleged that the Respondent State violated Articles 4 and 5 of the Charter through the judgment of the High Court which ordered him to be caned 12 strokes. It was the Applicant's submission that the imposition of caning violates the right to respect, dignity and integrity of the person as protected under Article 5 of the Charter. The Applicant also alleged that the Respondent State violated the Charter by not according him 'the right to legal representation'. The Applicant prayed the Court to find that the Respondent State had violated his rights and order reparations, including his release from prison.

Decision

- Two admissibility objections were raised- local remedies not exhausted, and application not filed within a reasonable time
- Court overruled the admissibility objection in that having seized the Court of Appeal, the highest judicial organ of the Respondent State, the Applicant had exhausted local remedies

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- Second admissibility objection upheld in that the Applicant had taken 5 years and 6 months from the time Respondent State had deposited the Declaration under Article 34(6) of the Protocol before filing Application, and given the fact that the Applicant had legal representation in the domestic proceedings, the Applicant had not provided the Court with any information justifying the delay hence not filed within a reasonable time
- Application was therefore declared inadmissible
- Merit of whether the sentence was excessive amongst others was thus not addressed by the Court

Dismas Bunyerere v United Republic of Tanzania, Application No. 031/2015

Background

Mr. Dismas Bunyerere is a national of the United Republic of Tanzania who, at the time of filing the Application, was a prisoner serving a sentence of 30 years imprisonment for armed robbery following his conviction by the District Court at Sengerema, Mwanza on 14 November 2006.

The Applicant alleged that in the course of consideration of his appeal at the Respondent State's Court of Appeal, his right to non-discrimination and the right to equality before the law and equal protection of the law guaranteed under Articles 2 and 3 of the Charter, respectively, were violated. The Applicant prayed the Court to order reparations, particularly compensation, the quashing of his conviction and sentence and his release from prison.

Decision

- Court held that the domestic Courts' evaluation of the evidence in this regard did not disclose any manifest error or occasion Applicant a miscarriage of justice and there was therefore no violation of Article 7 of the Charter
- The Court dismissed allegation that prosecution's evidence failed to support the invocation of the doctrine of recent possession, and there was no manifest errors of miscarriage of justice occasioned on the Applicant
- Court dismissed allegation that the Court of Appeal violated Applicant's right to non-discrimination, on the basis that the Applicant had not established how the Respondent State acted in a manner that was discriminatory

Sebastien Germain Ajavon v Republic of Benin (Reparations), Application No. 013/2017

Background

The Applicant filed a suit on February 2017 before the African Court, praying the Court to declare that he has been subject to violations of his rights such as: a) Certain acts on the part of the State of Benin particularly the withdrawal of his customs licenses and the disruption of his radio and television stations signals; b) His trial in the proceedings instituted against him by the Public Prosecutor and the Benin Customs Services in the cocaine trafficking case was not fair, despite the decision to acquit him.

The aforesaid facts constitute violation of Article 3(2), 7, 7(b), 14 of the African Charter on Human and Peoples' Rights (hereinafter referred to as the Charter), as well as Articles 7, 9 and 12 of the 1789 Universal Declaration of Human and Citizen Rights. The Applicant prays the Court to rule and declare the alleged violations founded.

Decision

[Click here](#) to view the decision in French.

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