

**JUDGMENT SUMMARY**

**DOMINICK DAMIAN**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 048/2016**

**JUDGMENT ON THE MERITS AND REPARATIONS**

**A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**

**ARUSHA, 4 June 2024**, the African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the matter of *Dominick Damian v. United Republic of Tanzania*.

Dominick Damian (the Applicant) is a national of the United Republic of Tanzania (the Respondent State). At the time of filing the Application, he was awaiting execution of the death sentence at Butimba Central Prison in Mwanza, having been convicted of the offence of murder. In the Application before the Court, he challenges the violation of his rights in connection with proceedings before domestic courts.

In his Application, the Applicant alleges that the Respondent State violated his rights under Articles 4, 5, 7(1)(c) and 7(1)(d) of the African Charter on Human and Peoples' Rights (the African Charter) as a result of the criminal proceedings before domestic courts.

The Respondent State raised an objection to the Court's material jurisdiction on the grounds that the present Application requests the Court to sit as an appellate court to consider issues of fact and law previously decided by the High Court of Tanzania.

The Court recalled that it had already established that where allegations of human rights violations relate to the manner in which domestic courts assessed the evidence and to the sentence imposed by them, it reserves the power to determine whether the related domestic proceedings were conducted in a manner that is consistent with international human rights instruments to which the Respondent State is a party, including the relevant provisions of the African Charter. The Court therefore dismissed the Respondent State's objection to its material jurisdiction.

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Although other aspects of its jurisdiction were not challenged by the Respondent State, the Court nevertheless examined all aspects of its jurisdiction and held that it had personal, temporal and territorial jurisdiction to determine the Application.

Regarding the admissibility of the Application, the Court considered the Respondent State's objection that the Application was not filed within a reasonable time after exhaustion of local remedies. The Court found that the length of time of two (2) years, five (5) months and fifteen (15) days that it took for the Applicant to file his Application was reasonable within the meaning of Article 56(6) of the Charter given that the Applicant was incarcerated and on death row, lay in law, self-representing and required time to reflect on the advisability of seizing the Court as he had filed an application for review before the Court of Appeal.

Having regard to the other admissibility requirements not contested by the Parties, the Court found that the Application complied with them and therefore declared it admissible.

On the merits, the Applicant alleged that the Respondent State violated i) his right to a fair trial; iii) his right to life, and iii) his right to respect for his dignity.

With regard to the allegation that the Respondent State violated the Applicant's right to a fair trial, the Court noted that the Applicant complained of an unduly long pre-trial detention of five (5) years and three (3) months, given that his case was not complex and relied on witness testimony that was allegedly prejudiced, given the lapse of time between arrest and trial. Upon examination of the length of pretrial detention, the Court found that the lapse of time of five (5) years and three (3) months could not be considered unreasonable within the meaning of Article 7(1)(d) of the African Charter as competent authorities of the Respondent State during the said period performed relevant actions as provided in domestic law. The Court also took into consideration the fact that the multiple postponements of the Applicant's trial were part of the ordinary course of criminal proceedings, which in the domestic system of the Respondent State are conducted on the basis of sessions.

Regarding the alleged violation of the right to defence, the Court dismissed the claim that the Respondent State violated Article 7(1)(c) of the African Charter as there was no evidence on the record that the Applicant's legal representative was prevented from preparing the Applicant's defence, that the Applicant had not raised the issue of ineffective representation in the course of the domestic proceedings, and that the Applicant had twice informed the trial court that he would not call any witnesses other than himself.

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The Court then considered the alleged violation of the right to be presumed innocent in respect of which the Applicant claimed that the Respondent State convicted him without establishing his guilt beyond a reasonable doubt. The Court dismissed the alleged violation of Article 7(1)(b) of the African Charter upon scrutiny of the record which revealed that evidence at trial was fairly evaluated and was strong and credible to warrant a conviction without any miscarriage of justice.

With regard to the Applicant's allegation that his right to be tried by an impartial court was violated as the trial court participated in cross-examination of witnesses, the Court noted that Article 7(1)(d) of the African Charter entitles individuals to have their cause heard by an impartial tribunal that is not biased or prejudiced, but where prejudice or bias is alleged, that the allegation must be irrefutably proven. Upon perusal of the record, the Court found that the trial assessors did not partake in cross examination and were questioning witnesses for clarity in conformity with ordinary trial procedures. In view of the forgoing, the Court dismissed the alleged violation of 7(1)(d) of the Charter.

With regard to the alleged violation of the right to life, the Court held that the Applicant's right to life under Article 4 of the Charter had been violated through imposition of the mandatory death sentence under Section 197 of the Respondent State's Penal Code which constitutes an arbitrary deprivation of the right to life. In arriving at this finding, the Court relied on its now established case-law that the right to life is breached under Article 4 of the African Charter in instances where the judicial officer is deprived of the discretion to decide on any other penalty than the death sentence once the offence of murder is established. The Court reiterated its finding that, in such circumstances, fairness is not upheld while imposing the death sentence, thus making the latter contrary to the right to life within the meaning of Article 4 of the Charter.

In relation to the alleged violation of the right to dignity under Article 5 of the African Charter, the Court noted that the Applicant was sentenced to death by hanging and reiterated its established jurisprudence that hanging as a method of implementing the death penalty constitutes a violation of Article 5 of the African Charter as it constitutes a form of torture and cruel, inhuman and degrading treatment.

Regarding reparations, the Applicant prayed the Court to grant him reparations for the violations he suffered, to vacate his conviction and sentence, and to order his release.

As regards pecuniary reparations, the Court declined to grant reparations for material prejudice for lack of proof of prejudice but noted that the violations found caused the Applicant moral prejudice and therefore,

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in the exercise of its judicial discretion, awarded the Applicant the sum of Three Hundred Thousand (300,000) Tanzanian shillings as fair compensation.

The Court declined to quash the Applicant's conviction and to order his release on the basis that the establishment of guilt beyond a reasonable doubt for murder had been unimpeachable. The Court however ordered the Respondent State to revoke the death sentence meted against the Applicant, and remove him from death row.

The Court further ordered that the Respondent State remove the mandatory death penalty from its statute book within six (6) months of the notification of the judgment; and take all necessary measures, within one (1) year of the notification of the judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and uphold the discretion of the judicial officer.

The Court further held that the violation against the right to life established by the Applicant extended beyond his case and required an order that the Respondent State publish the judgement within three (3) months of notification of the judgement on the website of the Judiciary, the Minister for Constitutional and Legal Affairs for one (1) year after the date of publication.

The Court decided that each party should bear its own costs.

In accordance with Article 28(7) of the Protocol and Rule 70(3) of the Rules, Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA issued Declarations which are appended to the Judgment.

### **Further Information**

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/details-case/0482016>

For any other queries, please contact the Registry by email [registrar@african-court.org](mailto:registrar@african-court.org)

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