

JUDGMENT SUMMARY

KABALABALA KADUMBAGULA AND DAVUD MAGUNGA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 031/2017

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 *Kabalabala Kadumbagula and Daud Magunga v. United Republic of Tanzania*.

Kabalabala Kadumbagula and Daud Magunga (the "First Applicant" and "Second Applicant" respectively or "the Applicants" jointly) are Tanzanian nationals who were convicted of gang rape and sentenced to life imprisonment which they were serving at Uyui Central Prison in Tabora at the time of filing the Application. In the Application before the Court, they challenged the violation of their rights to a fair trial by domestic courts.

In their Application, the Applicants both alleged that the Respondent State violated their rights under Articles 7(1)(C) of the African Charter on Human and Peoples' Rights (the African Charter). The First Applicant alleged that the Respondent State further violated his right under Article 7(1) of the African Charter while the Second Applicant alleged that the Respondent State additionally violated his right under Article 7(2) of the African Charter.

The Respondent State raised an objection to the Court's material jurisdiction on the grounds that the present Application requested 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, as it had already established, 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

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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.

The Respondent State also raised an objection to the Court's temporal jurisdiction, on the grounds that the violations complained of by the Applicants were not ongoing. The Court held, based on its case-law, that the Applicants complaints of violations of the Charter occurred between 2000 and 2009, after the Protocol had entered into force in respect of the Respondent State. The Court accordingly dismissed the Respondent State's objection to temporal jurisdiction.

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

With regard to the admissibility of the Application, the Respondent State raised objections with respect to exhaustion of local remedies and the fact that the Application was not filed within a reasonable time after exhaustion of local remedies.

In relation to the objection that local remedies were not exhausted, the Court held that the requirement was met when the Court of Appeal dismissed the First Applicant's appeal on 5 November 2009. The Court therefore dismissed the Respondent's objection in relation to non-exhaustion of local remedies.

The Court further considered the Respondent State's objection that the alleged failure to provide legal representation was never raised in domestic proceedings and it therefore never had the opportunity to remedy it through its local processes. The Court dismissed this objection to admissibility on the basis that the Respondent State had ample opportunity to address this matter as the judicial authority ought to have been aware of the alleged failure when they examined the criminal matter involving the Applicants.

In relation to the objection that the Application was not filed within a reasonable time after exhausting local remedies, the Respondent State argued that the Application was filed seven (7) years, five (5) months and twenty-nine (29) days after the Court of Appeal of Tanzania dismissed the First Applicant's appeal and that this lapse of time was unreasonable as contemplated in Rule 50(2)(f) of the Rules of Court (the Rules).

The Court held, based on its jurisprudence, that the reasonableness of the timeframe for approaching the Court after exhaustion of local remedies depends on the specific circumstances of the case and that a

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period of seven (7) years and two (2) months was considered unreasonable without compelling reasons for said delay. The Court therefore upheld the Respondent State's objection to the First Applicant's Application and declared it inadmissible for having not been filed within a reasonable time as prescribed under Article 56(6) of the African Charter.

In relation to the Second Applicant, the Court found that he had pursued the extraordinary remedy of review, and the time spent doing so should be taken into account in determining reasonableness of time. The Court stressed that the Second Applicant's application for review was dismissed on 31 July 2017, while he filed his Application before this Court one (1) month and 27 days later. Consequently, the Court dismissed the Respondent State's objection that the Second Applicant's Application was not filed within a reasonable time under Article 56(6) of the African Charter.

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

On the merits, the Court considered only allegations made by the Second Applicant since the Application had been found inadmissible in respect of the First Applicant.

The Second Applicant alleged that the Respondent State violated his right to a fair trial by i) failing to provide him with legal representation and ii) imposing a sentence of life imprisonment against him when a more lenient sentence for his offence had been prescribed under an amended domestic Penal Code.

Regarding the alleged violation of the right to defence, the Court considered the Second Applicant's claim that he was unrepresented during criminal proceedings. Although the Respondent State contended that the Second Applicant was not precluded from applying for legal assistance, the Court found that the Second Applicant was a minor at the time the offence was committed, that he was indigent and that he was never informed of his right to legal assistance in domestic proceedings despite being charged with a grave offence that carried a heavy sentence. Notwithstanding the Respondent State's contentions that the Second Applicant was not entitled to free legal assistance under domestic laws, the Court also considered that the interests of justice demanded that he be legally represented at his trials and appeal. Consequently, the Court found that the Respondent State violated Article 7(1)(c) of the African Charter read together with Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) by failing to inform the Second Applicant of his right to legal representation and providing same free of charge for his serious criminal proceedings.

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The Court then considered the Second Applicant's allegation that minors who commit gang rape are sentenced to corporal punishment under the Respondent State's revised Penal Code but he was sentenced to life imprisonment given the Respondent State's Interpretation of Laws Act which prohibited retrospective application of the revised Penal Code. In making its determination, the Court considered that while the retrospective application of lenient penalties was not expressly stated in Article 7(2) of the African Charter, it was provided under Article 15(1) of the ICCPR to which the Respondent State was a party. As such, the Court held that retrospective application of more lenient sentences was part of an emerging consensus in international law, and found that the Respondent State violated the Second Applicant's right to benefit from a more lenient sentence in terms of Article 15(1) of the ICCPR. The Court further found that the inclusion of corporal punishment for minors violated Article 5 of the Charter as it constituted inherently inhuman and degrading punishment.

The Court also held that the Second Applicant was a minor at the time of commission of the offence and therefore was entitled to treatment which was aimed at his reformation and reintegration into society in terms of Article 17(3) of the African Charter on the Rights and Welfare of the Child (African Children's Charter) and Article 40(1) of the United Nations Convention on the Rights of the Child (CRC) both of which have been ratified by the Respondent State. The Court consequently held that the imposition of a life sentence on the Second Applicant constituted a violation of the aforementioned provisions based mainly on the best interests of the child.

Regarding reparations, the Second Applicant prayed the Court to grant him reparations to the tune of Thirteen Million and Twenty-Two Thousand (13 022 000) Tanzanian Shillings along with special damages suffered. As regards pecuniary reparations, the Court declined to grant reparations for material prejudice for lack of proof of prejudice but noted that the violations established caused the Second Applicant moral prejudice and therefore, in the exercise of its judicial discretion, awarded the Second Applicant damages in the amount of One Million (1, 000,000) Tanzanian Shillings as fair compensation.

The Court further ordered the Respondent State to amend all provisions of its criminal law to align with Article 15(1) of the ICCPR, Article 17(3) of the African Children's Charter and Article 40(1) of the CRC, within two (2) years of notification of the judgment, and a report on the status of implementation of said order within six (6) months of notification of Judgement, and every six (6) months thereafter until fully implemented.

The Court also ordered the release of the Second Applicant as a measure of restitution for the undue term of imprisonment suffered.

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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 Chafika BENSAOULA issued a Declaration which is 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/0312017>

For any other queries, please contact the Registry by email registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.