

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

THE MATTER OF

THOBIAS MANG'ARA MANGO

AND SHUKURANI MASEGENYA MANGO

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 005/2015

JUDGMENT

(REPARATIONS)

2 DECEMBER 2021



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The Court composed of: Blaise TCHIKAYA Vice-President; Ben KIOKO, Rafaâ Ben ACHOUR, Suzanne MENGUE, M.-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO-Judges; and Robert ENO, Registrar.

Pursuant to 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 Court (hereinafter referred to as "the Rules")¹, Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Thobias Mang'ara MANGO and Shukurani Masegenya MANGO

Represented by:

Advocate Donald O. DEYA, Pan African Lawyers Union (PALU)

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Mr. Gabriel P. MALATA, Solicitor General, Office of the Solicitor General
- ii. Ms. Sarah MWAIPOPO, Acting Deputy Attorney General, Director, Division of Constitutional Affairs and Human Rights, Attorney General's Chambers
- iii. Ambassador Baraka LUVANDA, Director, Legal Unit, Ministry of Foreign Affairs, East Africa. Regional and International Cooperation
- iv. Ms. Nkasori SARAKEYA, Deputy Director, Human Rights, and Principal State Attorney, Attorney General's Chambers
- v. Ms. Alesia MBUYA, Assistant Director, Constitutional Affairs, and Principal State Attorney, Attorney General's Chambers

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

- vi. Mr. Mark MULWAMBO, Principal State Attorney, Attorney General's Chambers
- vii. Mr. Mussa MBURA , Senior State Attorney, Attorney General's Chambers

after deliberation,

renders the following Judgment:

I. BRIEF BACKGROUND OF THE MATTER

1. In their Application filed before the Court on 11 February 2015, Messrs Thobias Mang'ara Mango and Shukurani Masegenya Mango (hereinafter referred to as "the Applicants" or the "First Applicant and "Second Applicant," as applicable,) alleged that their rights to a fair trial had been violated by the United Republic of Tanzania (hereinafter referred to as "the Respondent State"). The Applicants alleged that these violations arose from the Respondent State's failure to provide them with free legal assistance and with copies of some witness statements. The Applicants also allege that the Respondent State's delay in providing some witness statements during the criminal proceedings resulted in their conviction for the offence of armed robbery, and consequently, a sentence of thirty (30) years imprisonment.
2. On 11 May 2018, the Court rendered the judgment on merits whose operative part, at paragraphs ix, x, and xi, reads, as follows:
 - ix. Finds that the Respondent State has violated Article 7(1)(c) of the Charter as regards: the failure to provide the Applicants with free legal assistance; and the failure to provide the Applicants with copies of some witness statements, and the delay in providing them some witness statements. Consequently, finds that the Respondent State has violated Article 1 of the Charter;

On remedies

- x. Does not grant the Applicants' prayer for the Court to directly order their release from prison, without prejudice to the Respondent State applying such a measure *proprio motu*;
 - xi. Allows the Applicants, in accordance with Rule 63 of its Rules, to file their written submissions on the other forms of reparation within thirty (30) days from the date of notification of this Judgment; and the Respondent State to file its Response within thirty (30) days from the date of receipt of the Applicants' written submissions.
3. This Judgment thus serves as the basis of the present Application for reparations.

II. SUBJECT OF THE APPLICATION

4. On 30 July 2018, the Applicants filed their written submissions for reparations, praying the Court to award them reparations on the basis of its findings in the judgment on merits.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. On 11 May 2018, the Registry transmitted a certified true copy of the judgment on the merits to the Parties.
6. The Parties filed, after several extensions, their submissions on reparations within the time stipulated by the Court.
7. Pleadings were closed on 20 May 2020 and the Parties were duly notified.

8. On 4 September 2020, the Court issued an Order for re-opening pleadings, allowing the admission of the Applicants' additional evidence filed on 3 June 2020. The Order and Applicant's additional evidence were served on the Respondent State on 9 September 2020.
9. By a letter dated 6 May 2021 and received at the Registry on 12 May 2021, Shukurani Masegenya Mango, the Second Applicant, informed the Court that he had been released from prison on 26 April 2021 on Presidential pardon.
10. On 3 June 2021, the Respondent State filed its observations to the Applicants' additional evidence, together with a request for leave to file the same out of time. On 14 June 2021, the request for leave to file the Observations out of time was transmitted to the Applicants together with the said observations. The Applicants, however, did not file any observations.
11. Pleadings were closed again on 25 October 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicants pray the Court to grant them the following reparations:
 - a. The amount of twenty thousand dollars (USD 20,000) to each Applicant as a direct victim of moral prejudice suffered.
 - b. The amount of twenty thousand dollars (USD 20,000) collectively to the indirect victim.
 - c. The amount of five thousand dollars (USD 5,000) to Mr. Dickson Mango for the material prejudice suffered.
 - d. The amount of twenty thousand dollars (USD 20,000) in legal fees
 - e. The amount of one thousand, six hundred dollars (USD 1600) for expenses incurred.

- f. The Applicants pray that this Honourable Court applies the principle of proportionality when considering the award for compensation to be granted to the Applicants.
- g. The Applicants request that this Honourable Court makes an order that the Respondent guarantees non-repetition of these violations to them and that they are requested to report back to this Honourable Court every six months until they satisfy the orders this Court shall make when considering the submissions for reparations.
- h. The Applicants also ask that the government publishes in the national Gazette the decision on the merit of the main Application within one month of delivery of judgment as a measure of satisfaction.

13. The Respondent State prays the Court to make the following orders and declarations:

- a. That the Judgment of the Court dated 11th May, 2018 is sufficient reparation to the prayers found in the applicants' submission for reparations.
- b. A declaration that the steps taken by the Government of Tanzania to remedy delays and endeavour towards the provision of legal aid sufficient reparation.
- c. That, the Applicant's claim for reparations be dismissed in its entirety, with costs.
- d. That, the Respondent State pray for any other relief(s) this Court may deem fit to grant.

V. REPARATIONS

14. Article 27(1) of the Protocol provides that:

If the Court finds that there has been a violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

15. The Court recalls its earlier judgments and restates its position that:

[t]o examine and assess Applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim.²

16. The Court also restates that reparation "... must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."³

17. Measures that a State must take to remedy a violation of human rights include, restitution, compensation and rehabilitation of the victim, satisfaction and measures to ensure non-repetition of the violations, taking into account the circumstances of each case.⁴

18. The Court reiterates that with regard to material prejudice, the general rule is that there must be an existence of a causal link between the alleged violation and the prejudice caused, and that the burden of proof is on the Applicant who has to provide evidence to justify his prayers.⁵ Exceptions to this rule include moral prejudice, which does not need to be proven, since there is a presumption at law, in favour of the Applicant, resulting in the burden of proof shifting to the Respondent State.

² *Mohamed Abubakari v. United Republic of Tanzania*, ACtHPR, Application No. 007/2013, Judgment of 4 July 2019 (reparations), § 19; *Alex Thomas v. United Republic of Tanzania*, ACtHPR, Application No. 005/2013, Judgment of 4 July 2019 (reparations), § 11; *Lucien Ikili Rashidi v. United Republic of Tanzania*, ACtHPR, Application No. 009/2015, Judgment of 28 March 2019 (merits and reparations), § 116; *Ingabire Victoire Umuhoza v. Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

³ *Mohamed Abubakari v. Tanzania* (reparations), § 20; *Alex Thomas v. Tanzania* (reparations), § 12; *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 20; *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 118.

⁴ *Mohamed Abubakari v. Tanzania* (reparations), § 21; *Alex Thomas v. Tanzania* (reparations), § 13; *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 20.

⁵ *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v Burkina Faso*, (reparations) (3 June 2016) 1 AfCLR 346, § 15. *Mohamed Abubakari v. Tanzania* (reparations), § 22, *Alex Thomas v. Tanzania* (reparations), § 14.

19. The Court further restates, as per its case-law, that damages should be awarded, where possible, in the currency in which loss was incurred. In the instant case, while the Applicants make their claims in United States Dollars, damages will be awarded in Tanzanian Shillings as all potential awardees reside on the territory of the Respondent State and the single prejudice forming the basis of all the claims occurred in the same country.⁶

20. In the instant case, in its Judgment on the merits, the Court established that the Respondent State violated the Applicants' right to a fair trial provided under Article 7(1)(c) of the Charter. As a consequence of these violations, the Court also found a violation of Article 1 of the Charter.

21. Relying on the above finding of the Court, the Applicants pray the Court to award them damages in the form of pecuniary and non-pecuniary reparations.

A. Pecuniary reparations

i. Material prejudice

a. Material prejudice suffered by the Applicants

22. The Applicants aver that as a result of their imprisonment, they lost their sources of income, properties and businesses.

23. The First Applicant claims that he ran a motorcycles transportation business and exported clothes to Kenya and Uganda. He claims that he lost three (3) motorcycles and his business "became bankrupt".

⁶ *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 45; *Amir Ramadhani v United Republic of Tanzania*, Application No. 010/2015. Judgment of 25 June 2021 (reparations), § 14.

24. The Second Applicant claims that he had a business known as *Agent of Sunrise Enterprise* which dealt in exporting wild birds to Japan, Israel and other countries and that the product was in high demand. He states that he derived his annual income from this business which he personally managed until he was arrested.
25. The Applicants claim that since their arrest was sudden, they did not have an opportunity to “hand over” their businesses or make the necessary arrangements regarding their personal and family affairs. This led to the collapse of their businesses and to loss of business contracts.
26. The Applicants aver that they should be awarded reparations in equity for loss of income. In this regard, they rely on the jurisprudence of the Inter-American Court of Human Rights (hereinafter referred to as “the Inter-American Court”) in *Sawhoyamaya Indigenous Community v. Paraguay* and *Bámaca-Velásquez v. Guatemala*. They also rely on the jurisprudence of the European Court of Human Rights (hereinafter referred to as “the European Court”) in *Young, James and Webster v. United Kingdom*.
27. Furthermore, the Applicants claim that their life plans and goals were severely disrupted and unattainable as a result of their imprisonment and that their dreams of expanding their businesses and leaving a reputable legacy for their children could not be attained.
28. While acknowledging that it is imperative to provide evidence to support their claims, they state that it has been difficult to obtain the said evidence because some documentation has been misplaced since their incarceration twenty (20) years ago. The Applicants pray the Court to apply equity to decide the compensation to be granted for their loss.
29. The Respondent State contests the Applicants’ submissions. It notes that the First Applicant has failed to provide evidence that he was a breadwinner for his

family; that he owned three motorcycles and that he was in the business of 'importing clothes to Kenya and Uganda'; and that he lost the income from managing these properties and businesses.

30. The Respondent State states that the Second Applicant has also failed to provide evidence of any income he earned from, or the ownership of, the business, *Agent of Sunrise Enterprise*. The Respondent State argues that the Applicants ought to have attached the business licences, agreements or any other document to prove ownership of what they claim.

31. The Respondent State also submits that there is no link between the losses the Applicants allege they suffered and the violation of their right to free legal representation.

32. The Court notes that, in order for a claim for material prejudice to be granted, the Applicant must show a causal link between the violation established and the loss suffered. Further, the Applicant must prove the loss suffered.⁷

33. In the instant case, the violations found did not vitiate the lawfulness of the Applicants' sentences. Since the Applicants based their claims on their incarceration, the Applicants have not established the link between the violations found and the compensation that they claim. Furthermore, the Court notes that, although it is likely the Applicants encountered difficulties in accessing some documents to support their claim, the affidavits they filed, both dated 3 July 2019, are not enough to prove their claims as they merely restated their submissions. The Court finds that, the Applicants ought to have supported

⁷ *Christopher Mtikila v. Tanzania* (reparations), § 40; *Lohé Issa Konaté v Burkina Faso*, (reparations), § 15. *Mohamed Abubakari v. Tanzania* (reparations), § 22, *Alex Thomas v. Tanzania* (reparations), § 14. *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema Alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso*, (reparations) (5 June 2015) 1 AfCLR 258, § 24.

the affidavits with other documentary evidence, such as, business licenses, tax filings with the Revenue Authority and bank records proving the existence and their ownership of businesses they refer to.⁸

34. For these reasons, the Court holds that the Applicants have not justified their claim for an award for material damages as a result of loss of income and loss of life plans.

35. The Court therefore dismisses this prayer.

b. Legal fees and expenses for proceedings before national courts

36. The Applicants claim that their families and relatives incurred high costs on their legal representation during the proceedings before the domestic courts, on attending court trials, on meals and medical bills, and on visiting them in prison.

37. The Applicants specifically claim that their brother Dickson Mango incurred expenses amounting to United States Dollars two thousand (USD 2000) for each of them for their legal representation by Kweka Law Chambers and Muna Advocates, both based in Mwanza, during their bail applications. They further state that, despite their brother having incurred these expenses, their bail was illegally cancelled under the guise that the police were still conducting investigations. They therefore pray the Court to grant “[T]he amount of five thousand dollars (USD, 5000) to Mr Dickson Mango for the material prejudice suffered.”

⁸ *Christopher Jonas v. United Republic of Tanzania*, Application No. 011/2015. Judgment of 25 September 2020 (reparations), § 20, *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 18; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania*, ACTHPR, Application No. 003/2015 Judgment of 30 September 2021 (reparations) § 30.

38. The Respondent State contends that there is no proof that the Applicants' brother incurred costs for payment of the legal services provided to the Applicants. The Respondent State avers that the Applicants should have provided retainer agreements or proper tax receipts to prove that they obtained the said legal representation.

39. The Court recalls that reparations may include the reimbursement of legal fees and other expenses incurred during domestic proceedings.⁹ However, it is incumbent upon an applicant to provide proof that they retained counsel to provide these services. They should also provide proof of the fees paid and expenses incurred.¹⁰

40. In the instant Application, the Applicants have filed affidavits stating that they hired counsel to represent them during the hearing of their bail applications. They have not adduced any other evidence to support these claims, such as retainer agreements with their counsel or receipts of payment of legal fees or bank transfers to the said counsel.

41. In these circumstances, the Court dismisses the Applicants' claims for reimbursement of legal fees incurred in the course of domestic proceedings.

ii. Moral prejudice

a. Moral prejudice suffered by the Applicants

42. The Applicants claim that they suffered physical and psychological abuse during their arrest. They also claim that they suffered emotional anguish and

⁹ *Ibid.*; *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 39; *Révérénd Christopher R. Mtikila v. Tanzania* (reparations), § 39, Application No 012/2017, ACtHPR, Judgment of 27 November 2020, *Léon Mugesera v. Rwanda* (merits and reparations), § 136.

¹⁰ *Ibid.*

financial strain during the trial process and long imprisonment. They submit that the prison conditions caused them both to suffer a great deal of emotional and physical stress.

43. The Second Applicant claims that he lost almost twenty (20) years of his life while incarcerated, which he will never get back and that he spent six (6) years awaiting his trial and yet this period was not considered when his sentence was handed down. The Applicants allege that several newspapers labelled them criminals, which continues to affect them negatively, as their reputations have been tarnished. Furthermore, the Applicants state that they have lost their social status and standing in their community as a result of their imprisonment.
44. The Applicants claim that their health has deteriorated significantly and that they suffer from chronic diseases and general illnesses due to the harsh prison environment and lack of medical treatment in prison.
45. The First Applicant has allegedly been diagnosed with Tuberculosis (TB) and spinal cord pain as a result of prison conditions and he claims to suffer severe stress and anxiety causing him to have panic attacks. The Second Applicant has allegedly been diagnosed with asthma, spinal cord pain, joint dislocation, deteriorating eye sight, discharge of pus from his ear canal and paralysis of the legs.
46. The Second Applicant alleges that during his arrest and in the course of investigations, he was assaulted by prison guards and suffered a dislocated knee, causing him significant physical pain and causing his brother, the First Applicant, emotional anguish.

47. The Applicants rely on this Court's jurisprudence¹¹ and that of the Inter-American Court¹² and the European Court¹³, to support their claim that where there are allegations of maltreatment when one is incarcerated, then the burden of proof shifts to the Respondent State to refute them.
48. The Applicants claim that their relationships with their wives broke down irretrievably due to their imprisonment and that they suffered physical and emotional distress because they failed to perform their duties to their family and children.
49. The First Applicant further states that his wife commenced divorce proceedings through Matrimonial Application No.7/2017 and it was only after family members and relatives intervened, that she stopped the said proceedings. The Second Applicant further submits that as a result of his imprisonment, his wife Mrs. Florida Shukurani divorced him and remarried, because of the stress and embarrassment of having a convict as a husband. He argues that because of this, he has suffered great emotional anguish following his now ex-wife's decision to divorce him.
50. The Applicants contend that "they have established a justified link between the wrongful acts of the Respondent State and the prejudice suffered, which was due to the failure of the Respondent State to provide the Applicants with legal representation". They rely on the Court's jurisprudence¹⁴ and that of the Inter-American Court¹⁵ to support their claim.

¹¹ *Kennedy Owino Onyanchi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65.

¹² *Aloeboetoe et al v. Suriname* (Reparations and Costs), IACtHR Judgment of 10 September 1993; *Velasquez Rodriguez v. Honduras* (Merits) IACtHR Judgment of 29 July 1988; *Gonzalez Medina and Family v. Dominican Republic* (Preliminary objections, merits, reparations and costs) IACtHR Judgment of 27 February 2012.

¹³ *El-Masri v. the Former Yugoslav Republic of Macedonia* No. 39630/09 ECHR 13 December 2012; *Merabishvili v. Georgia* No. 72508/13 ECHR 28 November 2017.

¹⁴ *Norbert Zongo and Others v. Burkina Faso* (reparations); *Thobias Mangara Mango and Shukurani Masegenya Mango v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 314.

¹⁵ *The Caracazo v. Venezuela* (Reparations and Costs) IACtHR Judgment of 29 August 2002.

51. The Applicants pray that, in calculating moral damages, the Court should apply equity and take into account the severity of the violation and impact on the Applicants. They further ask the Court to give weight to the period of time they were imprisoned and, order reparations, which would at least alleviate the suffering that they have endured since they cannot be returned to the position they were in before their incarceration.

52. The Applicants note that in the *Lohe Issa Konaté v Burkina Faso* case,¹⁶ the Applicant was awarded United States Dollars, twenty thousand (USD20, 000) as moral damages for eighteen (18) months imprisonment. They are of the view that their suffering and emotional anguish following an unfair trial and fifteen (15) years imprisonment entitles them to a similar award. They request the Court to note that they were imprisoned for a significantly longer period than the applicant in the *Konaté* case.

53. Consequently, the Applicants pray the Court to award them twenty thousand US Dollars (USD 20,000) each, as compensation for moral prejudice suffered they suffered as direct victims.

*

54. Relying on this Court's jurisprudence in *Norbert Zongo v. Burkina Faso* (reparations) and the Inter-American Court's jurisprudence in *Ticona Estrada & Others v. Bolivia* regarding the principle of causality, the Respondent State contests the Applicants' submissions and states that there is no direct link between the violations found and damages claimed by the Applicants. The Respondent State submits that there are no medical records which suggest that the Applicants ever suffered any illness while in prison. The Respondent State elaborates that the Applicants are well and alive and serving a lawful term in prison for committing an offence and receiving medical treatment at the State's expense.

¹⁶ *Lohé Issa Konaté v. Burkina Faso* (reparations).

55. The Respondent State further argues that there is no proof that the Second Applicant's wife has divorced him and has remarried; there is also no proof, that the Second Applicant's wife's alleged divorce and remarrying were a result of violations of the Second Applicant's rights by the Respondent State.

56. The Court notes that moral prejudice is that which results from the suffering, anguish and changes in the living conditions of the victim and his family.¹⁷

57. The Court further notes that the Applicants have invoked its jurisdiction in equity and prayed to be awarded United States Dollars twenty thousand (USD20, 000) each, for the moral prejudice they allegedly suffered.

58. In its judgment on the merits, the Court determined that there was a violation of the Applicants' right to a fair trial since the Respondent State failed to provide the Applicants with free legal assistance, and delayed in providing them with some witness statements and with copies of some witness statements.

59. These violations are presumed to have caused the Applicants emotional anguish and despair in the course of the proceedings against them. The Court emphasises that the presumption of moral prejudice to the Applicants arises from the violations established and is not based on the Applicants' imprisonment, the length of their prison terms or the conditions in the prisons.

60. Consequently, the Court finds that the moral prejudice suffered by the Applicants as a result of the violations established entitles them to compensation. The Court has also held that the assessment of quantum in cases of moral prejudice must be assessed fairly, taking into account the

¹⁷ *Christopher Mtikila v. Tanzania* (reparations), § 34; *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 59; *Mohamed Abubakari v. Tanzania* (reparations), § 43; *Alex Thomas v. Tanzania* (reparations), § 37.

circumstances of the case.¹⁸ In such instances, affording lump sums would generally apply as the standard.¹⁹

61. The Court finds that the Applicants' claim for an award of United States Dollars Twenty Thousand (USD 20,000), which is equivalent to Tanzanian Shillings Forty Six Million (TZS 46,000,000 at the current exchange rate), each, is excessive. Consequently, and in the judicial exercise of its discretion, the Court awards each Applicant the sum of Tanzanian Shillings Two Million Five Hundred Thousand (TZS 2,500,000), as fair compensation for the moral prejudice they suffered.

b. Moral prejudice suffered by indirect victims

62. The Applicants submit that their relatives as listed below, suffered great emotional pain and anguish as a result of the Applicants' imprisonment and the conditions that the Applicants have had to endure.

63. The First Applicant lists the following relatives as those he claims should be recognised as indirect victims:

- i. Dorothea Thobias Mango alias Dorothea John Magesa -wife;
- ii. Happy Thobias Mango – daughter;
- iii. Yasinta Thobias Mango - daughter;
- iv. Selemani Thobias Mango - son;
- v. Kilionna Mango - mother;
- vi. Dickson Masegenya Mango - brother;
- vii. Harid David – nephew;
- viii. Wallace Mpangala – nephew;
- ix. Mohamed Bashir – nephew;

¹⁸ *Norbert Zongo and Others v. Burkina Faso* (reparations), § 61; *Alex Thomas v. Tanzania* (reparations), § 40; *Mohamed Abubakari v. Tanzania* (reparations), § 44.

¹⁹ *Ibid.*

- x. Monica Simkiwa – niece;
- xi. Rhoda Simkiwa – niece.

64. The First Applicant states that his wife, Dorothea Thobias Mango, suffered great emotional distress when he was convicted and she instituted divorce proceedings which she later stopped after family members intervened. The First Applicant also avers that she had to take care of their children without him, playing the dual role of a father and a single mother, an experience which has been very challenging and distressing for her. He alleges that his wife had to live with the stigma of having a convict for a husband, and that she ended up filing for divorce as the pressure became too much for her to handle.

65. It is the First Applicant's submission that without any source of meaningful income, his children's progress at school was severely disrupted and that his children have missed out on the opportunity and experience of being raised by their biological father.

66. The Second Applicant lists the following relatives as those he claims should be recognised as indirect victims:

- i. Florida Shukurani alias Holyda Masuka - ex-wife;
- ii. Kiliono Mango - mother;
- iii. Masegenya Shukurani Mango - son;
- iv. Dickson Masegenya Mango - brother
- v. Harid David - nephew;
- vi. Wallace Mpangala - nephew;
- vii. Rhoda Simkiwa – niece;
- viii. Monica Simkiwa – niece.

67. The Second Applicant states that before his ex-wife filed for divorce, she faced significant financial constraints in taking care of their son alone and therefore suffered great distress. His ex-wife had to play the dual role of a father and a

single mother and that this was draining for her, particularly since she had to live with the stigma of having a convict as a husband, leading her to file for divorce and have their marriage dissolved.

68. The Second Applicant also claims that his lengthy trial and imprisonment disrupted the day-to-day lives of his family members and relatives. He argues that his son's education was disrupted because he, as his father, lacked any source of meaningful income to fund his studies. His son also missed out on the opportunity of being raised by his biological father.

69. The Applicants claim that their mother suffered great anguish "losing two children at the same time". They also state that they contributed towards the upkeep of their nieces and nephews but could no longer do so after their incarceration. The Applicants state that they lost touch with some of the indirect victims who have been difficult to trace and locate.

70. The Applicants' brother, Dickson Masegenya Mango, the First Applicant's wife, Dorothea John Magesa, the Second Applicant's ex-wife, Florida Shukurani, swore affidavits dated 3 July 2019, 15 July 2019 and 15 July 2019, respectively, reiterating the Applicants' submissions on the prejudice that they, and the alleged indirect victims allegedly suffered.

71. The Applicants claim that dependents and next of kin are entitled to reparations based on the presumption that a violation committed against a direct victim also results in some form of harm to the indirect victims. They rely on the Inter-American Court's jurisprudence in *Castillo-Paez v. Peru* in this regard.

72. They argue that they have established a relationship between them and the indirect victims. They state that even in the absence of birth certificates and marriage certificates, the conduct of the indirect victims towards the Applicants from the time they were incarcerated clearly shows a close family bond. They

state that their wives, children, siblings and families are clearly identified and should be admitted as indirect victims for purposes of awarding reparations. They further argue that in terms of the national laws in the Respondent State, there is a presumption of a legal marriage where a man and woman have lived together as husband and wife for two (2) or more years.

73. Relying on the *Norbert Zongo v. Burkina Faso (Reparations)* case, where the Court ruled that the indirect victims also suffered moral prejudice, the Applicants ask the Court to take cognisance of the fact that twenty (20) years have elapsed since they were arrested and therefore the indirect victims have also suffered for that period of time. They therefore pray that the Court grants “the amount of Twenty Thousand dollars (USD 20,000) collectively to the indirect victim” as reparations for their suffering.

74. The Respondent State disputes the claim for reparations for indirect victims, on the basis that it has not been proven how the alleged indirect victims are related to, or were being supported by, the Applicants, for them to be awarded the amounts claimed.

75. The Respondent State relies on the Court’s decision in the *Lucien Ikili Rashidi v. Tanzania* case; that indirect victims must prove their relation to the Applicant in order to be entitled to reparations. Furthermore, the Respondent State notes that in the *Norbert Zongo v. Burkina Faso (Reparations)* case, the position of the Court was to place the victim, as much as possible, in the situation they were in prior to the violation, rather than to make them richer or poorer. The Respondent State is of the view that the Applicants have failed to provide facts which would enable the Court to determine this position. Further, regard being had to this Court’s decision in the matter of *Christopher Mtikila v. Tanzania (reparations)*, the Respondent State argues that not every violation results in loss.

76. The Respondent State also argues that the situation of the indirect victims in the *Zongo* case, and the alleged indirect victims in this Application, are not comparable, since in the *Zongo* case, the indirect victims were known beforehand, which is not the same in this case.
77. It argues further that the indirect victims have not provided proof of the alleged emotional, physical, financial and psychological trauma that they allegedly suffered, or of the loss of social status, and of the social stigma from having relatives who are convicts.
78. The Respondent State avers that the Applicants have not produced any evidence to demonstrate that the alleged indirect victims are struggling, or the extent to which they have struggled throughout the years as a result of the violation of the Applicants' right to free legal assistance. The Respondent State also argues that the Applicants have no basis to assess the alleged indirect victims' suffering since they have admitted to have lost contact with them.
79. The Respondent State contests the affidavits filed by the Applicants, the Applicants' brother, Dickson Masegenya Mango and the First Applicant's wife, Dorothea John Magesa regarding the prejudice that they allegedly suffered.
80. The Respondent State submits that the Court should find in this case as it did in the *Christopher Mtikila* case: "...that Judgment *per se*, can constitute a sufficient form of reparation for moral damages".²⁰
81. The Respondent State therefore prays the Court to dismiss the Applicants' claim for reparations for moral prejudice to the alleged indirect victims.

²⁰ *Christopher Mtikila v. Tanzania* (reparations), § 45.

82. The Court recalls that compensation for moral prejudice also applies to relatives of the victims of human rights violations as a result of the indirect suffering and distress they endure. The Court reiterates that:

[i]t is apparent that the issue as to whether a given person may be considered as one of the closest relatives entitled to reparation has to be determined on a case-by-case basis, depending on the specific circumstances of each case.²¹

83. The Court notes that with regard to indirect victims, as a general rule, moral prejudice is presumed, with respect to parents, spouses and children, and reparation is granted only when there is evidence of a spousal relationship or filiation to an applicant, including through, marriage certificates for spouses and birth certificates for children and parents or other acceptable proof. For other categories of indirect victims, there must be proof of the moral prejudice suffered.²²

84. The Court notes that the Applicants have listed the alleged indirect victims, some of whom filed affidavits restating the Applicants' claims for reparations for the moral prejudice these indirect victims allegedly suffered.

85. The Court further notes that Dickson Masegenya Mango provided certified true copies of his voter's card and birth certificate. The Court notes that his birth certificate indicates that his father is Masegenya Mang'ara Mango. In view of the evidence of the voter's card, the birth certificate, the common names between the Applicants, their brother and their father and the affidavit that Dickson Masegenya Mango swore, the Court finds that the Applicants have proven that Dickson Masegenya Mango is their brother.

²¹ *Norbert Zongo and Others v. Burkina Faso* (reparations), § 49.

²² *Zongo and others v. Burkina Faso* (reparations), § 54; *Alex Thomas v. Tanzania* (reparations), § 49, *Mohamed Abubakari v. Tanzania* (reparations), § 59; *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 135; *Léon Mugesera v. Rwanda* (merits and reparations), § 148, *Ingabire Victoire Umuhoza v. Rwanda* (reparations), § 66 *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* ACtHPR, Application No. 007/2013, Judgment of 4 July 2019 (reparations), § 70;.

86. Having determined that the Applicants have proven that Dickson Masegenya Mango is their brother, the Court finds that, as the Applicants' sibling, he is presumed to have endured emotional anguish arising from the violations endured by the Applicants.
87. With regard to the quantum of the damages to be awarded for the moral prejudice suffered by the Applicant's brother, Dickson Masegenya Mango, the Court therefore considers that an amount of Tanzanian Shillings One Million (TZS 1,000,000) is fair compensation for the moral prejudice he suffered.
88. As regards the claim by the Applicants' mother, whom they listed as Kilionna Mango, there is no evidence provided attesting to her identity. The Applicants, their brother, Dickson Masegenya Mango, the First Applicant's wife, Dorothea John Magesa, and the Second Applicant's ex-wife, Florida Shukurani, filed affidavits deposing that Kilionna Mango is their mother and mother-in law, respectively. The Court further notes that, the Applicants' brother, Dickson Masegenya Mango's birth certificate indicates that his mother, who is the same as the Applicants' mother, is Christina Mabale Nyamasahi, yet the Applicants list their mother as Kilionna Mango. The Applicants have not provided any explanation for the difference between the name of their mother as they have listed on their claim, that is Kilionna Mango, and the name recorded in the Applicants' brother's birth certificate, that is Christina Mabale Nyamasahi. There is also no other evidence to prove the filiation between the Applicants and their mother. Furthermore, the Respondent State contested this evidence. In these circumstances, therefore, the Court finds that the Applicants have failed to establish the filiation between them and their alleged mother and therefore the prayer for an award for damages for the moral prejudice she allegedly suffered is dismissed.

89. The Court also notes that the Applicants have provided a certified true copy of the birth certificate for Happy Mango attesting to the fact that the First Applicant is her father and Dorothea John is her mother. This evidence proves that Happy Mango is the First Applicant's daughter. The Court finds that she would be presumed to have also endured emotional anguish arising from the violations endured by the First Applicant. The Court therefore considers that an award for the amount of Tanzanian Shillings One Million Five Hundred Thousand (TZS 1, 500,000) is fair compensation for the moral prejudice she suffered.
90. The Court notes that Happy Mango's birth certificate indicates that Dorothea John is her mother and Tobias Mango is her father. Taking this together with the affidavit Dorothea John swore, attesting to her marriage to the First Applicant, the Court finds that the First Applicant has proved that Dorothea John Mageza also known as Dorothea Tobias Mango is his wife.
91. Having determined that Dorothea John has proved her spousal relationship to the First Applicant, the Court finds that she is presumed to have endured emotional anguish arising from the violations against the First Applicant. The Court therefore considers that an amount of Tanzanian Shillings Two Million (TZS 2,000,000) is fair compensation for the moral prejudice she suffered.
92. Regarding Florida Shukurani alias Holyda Masuka, the Second Applicant's ex-wife's claim, the Court notes that although she swore an affidavit on 15 July 2019 attesting to being the Second Applicant's ex-wife, in view of the fact that she and the Second Applicant divorced, the Second Applicant's claim that she suffered moral prejudice as an indirect victim of the violations found cannot be sustained. This prayer is therefore dismissed.

93. The Court also notes that Rhoda Simkiwa and Monica Simkiwa provided certified true copies of their voters' cards attesting to their identity. Further, the Applicants, Dickson Masegenya Mango, Dorothea John Magesa and Florida Shukurani filed affidavits stating that Rhoda Simkiwa and Monica Simkiwa are their nieces and that the Applicants and their brother were responsible for their upkeep. However, there is no other evidence to prove that the Applicants were responsible for their nieces' upkeep as alleged. Besides, the Respondent State contested this evidence.

94. The Court observes that there is no evidence provided to attest to the identity of the other alleged indirect victims, Yasinta Thobias Mango, Selemani Thobias Mango, Masegenya Shukurani Mango, Harid David, Mohamed Bashir and Wallace Mpangala.

95. The Court further notes that the Applicants have not provided documentary evidence to prove that the alleged indirect victims referred to in paragraphs 93 and 94 above "behaved in a manner that would lead to a conclusion that they had a close family bond with the Applicants" and that they were related to each other as claimed. More importantly, the Applicants have not provided any evidence of the alleged moral prejudice these alleged indirect victims suffered.²³

96. In view of these circumstances, the Court finds that the claim for damages for moral prejudice allegedly suffered by these alleged indirect victims is unjustified and is therefore dismissed.

²³ *Christopher Jonas v. United Republic of Tanzania (reparations)*, § 27, *Lucien Ikili Rashidi v. Tanzania (merits and reparations)*, § 135.

B. Non-pecuniary reparations

i. Guarantees of non-repetition and report on implementation

97. The Applicants pray the Court to make an order that the Respondent State guarantees non-repetition of these violations. They state that the Respondent State's promulgation of the Legal Aid Act in 2017 cannot be applied retroactively as the violations by the Respondent State against them occurred during their trials and appeals, before the enactment of this law. They also pray the Court to order the Respondent State to report to the Court every six (6) months, until it implements the orders the Court shall make in its judgment on reparations.

98. The Respondent State submits that it already took measures towards the provision of the legal aid services in the country and therefore the Applicants' prayer for guarantees of non-repetition of this violation lacks merit.

99. The Court observes, that, while guarantees of non-repetition generally apply in cases of systemic violations,²⁴ these remedies would also be relevant in individual cases where the violations will not cease, are likely to reoccur, or are systemic or structural in nature.²⁵

100. The Court considers that the criminal proceedings involving the Applicants were finalised. The Applicants were convicted. Therefore, the Court does not deem it necessary to issue an order regarding non-repetition of the violations

²⁴ *Armand Guehi v. United Republic of Tanzania*, (merits and reparations), § 191; *Norbert Zongo and Others v. Burkina Faso* (reparations), §§ 103-106.

²⁵ *Armand Guehi v. Tanzania* (merits and reparations), § 191; *Christopher Mtikila v. Tanzania* (reparations), § 43.

of the Applicants' rights, since there is no possibility of such violations being repeated.²⁶

101. The Court also notes that the Respondent State's Parliament enacted the Legal Aid Act on 21 February 2017. The Legal Aid Act sets out a comprehensive legal aid framework for both civil and criminal matters.

102. The Court notes that the framework of the Legal Aid Act is a remedy which guarantees the Respondent State's non-repetition of failure to provide free legal assistance.²⁷

103. The Applicants' prayer in this regard is therefore dismissed.

ii. Measures of satisfaction

104. The Applicants request an order that the Respondent State publishes in the "national Gazette", the judgment on merits of 11 May 2018, as a measure of satisfaction. They maintain that a judgment *per se* cannot constitute a sufficient form of reparations for the prejudice they suffered.

105. The Respondent State argues that the judgment issued by the Court on 11 May 2018 is sufficient reparation for the Applicants and that in any event, the Court's judgments are freely accessible on its website. They therefore submit that the Applicants are not entitled to further measures of satisfaction.

²⁶ *Armand Guehi v. Tanzania* (merits and reparations), §§ 191-192; *Mohamed Abubakari v. Tanzania* (reparations), § 72.

²⁷ *Alex Thomas v. Tanzania* (reparations), § 69.

106. Though the Court considers that a judgment, *per se*, can constitute a sufficient form of reparation,²⁸ it can, *suo motu*, order further measures of satisfaction as it deems fit.

107. The Court considers that there is nothing in the circumstances of this case warranting it to make such further orders of satisfaction, on the publication of the judgments, particularly since the Court has awarded the Applicants compensation for moral prejudice resulting from the violations found.

VI. COSTS

108. In terms of Rule 32(2) of the Rules²⁹ “unless otherwise decided by the Court, each party shall bear its own costs.”

109. The Court recalls that, in line with its earlier judgments, reparation may include payment of legal fees and other expenses incurred in the course of international proceedings.³⁰ The Applicant must provide justification for the amounts claimed.³¹

A. Legal fees related to proceedings before this Court

110. The Applicants pray that the Court grants:

[I]legal aid fees for 300 hours of legal work, 200 hours for two Assistant counsel and 100 hours for the lead Counsel charged at USD 100 per hour for the lead Counsel and (US50 per hour for the Assistants. This amounts

²⁸ *Armand Guehi v. Tanzania* (merits and reparations), § 194; *Christopher Mtikila v. Tanzania* (reparations), § 45.

²⁹ Formerly Rule 30(2) of the Rules of 2 June 2010.

³⁰ *Norbert Zongo and Others v. Burkina Faso* (reparations), §§ 79-93; *Christopher Mtikila v. Tanzania* (reparations), § 39; *Mohamed Abubakari v. Tanzania* (reparations), § 81; *Alex Thomas v. Tanzania* (reparations), § 77.

³¹ *Norbert Zongo and Others v. Burkina Faso* (reparations), § 81; *Christopher Mtikila v. Tanzania* (reparations), § 40.

to USD 10,000) for the lead counsel and USD 10,000) for the two Assistants.

111. The Respondent state disputes the claims for legal fees because the Applicants were covered by the legal assistance scheme of the Court and so could not have incurred any such fees; rather they, and their Counsel want to unjustly enrich themselves.

112. The Court will not rule on this claim since the Applicants withdrew it when they filed their Reply.

B. Transport and stationery costs

113. Using the precedent in the *Norbert Zongo v Burkina Faso* case, the Applicants pray the Court grant them reparations with regard to transport and stationery costs incurred as follows:

- i. Postage amounting to USD 200
- ii. Printing and photocopying amounting to USD 200
- iii. The transportation costs to and from the Seat of the African Court from the PALU Secretariat and from the PALU Secretariat to Butimba Prison amounting to USD 1,000
- iv. Communication costs amounting to USD 200

114. The Respondent State argues that the Court should not grant this prayer because these expenses claimed were covered by the Court under its legal aid scheme.

115. The Court will not rule on the claim because the Applicants withdrew it when they filed their Reply.

116. In light of the foregoing, the Court decides that each Party shall bear its own costs.

VII. OPERATIVE PART

117. For these reasons:

The Court,

Unanimously:

On pecuniary reparations

- i. *Dismisses* the Applicants' prayer for damages for material prejudice allegedly suffered;
- ii. *Dismisses* the Applicants' prayer for damages for moral prejudice to the following alleged indirect victims: Kiona Mango, Yasinta Tobias Mango, Selemani Tobias Mango, Florida Shukurani alias Holyda Masuka, Masegenya Shukurani Mango, Harid David, Wallace Mpangala, Mohamed Bashir, Monica Simkiwa and Rhoda Simkiwa;
- iii. *Dismisses* the Applicants' prayer for reimbursement for legal fees before domestic courts.
- iv. *Grants* the Applicants' prayer for damages for the moral prejudice they suffered due to the violations found and awards, Mr Tobias Mang'ara Mango and Shukurani Masegenya Mango the sum of Tanzanian Shillings Two Million, Five Hundred Thousand (TZS 2, 500,000) each;
- v. Grants the Applicant's prayer for moral damages suffered by the following indirect victims and awards compensation to them as follows:
 - a. Tanzanian Shillings Two Million (TZS 2,000,000) to Dorothea Tobias Mango alias Dorothea John Magesa, the First Applicant's wife

- b. Tanzanian Shillings One Million Five Hundred Thousand (TZS 1,500,000) to Happy Mango, the First Applicant's daughter
- c. Tanzanian Shillings One Million, (TZS 1,000,000) to Dickson Masegenya Mango, the Applicants' brother
- vi. Orders the Respondent State to pay the amounts indicated under (iv) and (v) above free from taxes, effective six (6) months from the date of notification of this Judgment, failing which, it will pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of the United Republic of Tanzania, throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations

- vii. *Dismisses* the Applicants' prayer for an order regarding non-repetition of the violations;
- viii. *Dismisses* the Applicants' prayer for an order regarding publication of the judgment on merits of 11 May 2018.

On implementation and reporting

- ix. *Orders* the Respondent State to submit to it, within six (6) months of the date of notification of this Judgment, a report on measures taken to implement the orders set forth herein and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

- x. Orders each Party to bear its own costs.

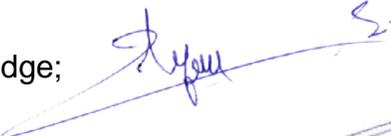
Signed:

Blaise TCHIKAYA, Vice President;



Ben KIOKO; Judge; 

Rafaâ BEN ACHOUR, Judge; 

Suzanne MENGUE, Judge; 

Marie-Thérèse MUKAMULISA, Judge; 

Tujilane R. CHIZUMILA, Judge; 

Chafika BENSAOULA, Judge; 

Stella I. ANUKAM, Judge; 

Dumisa B. Ntsebeza, Judge; 

Modibo SACKO, Judge; 

and Robert ENO, Registrar. 

Done at Dar es Salaam, this Second Day of December, in the year Two Thousand and Twenty One, in English and French, the English text being authoritative.

