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

THE MATTER OF

LADISLAUS ONESMO

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 047/2016

JUDGMENT

30 SEPTEMBER 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 BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO – Judges; and Robert ENO – 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 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

Ladislaus ONESMO
Self-represented

Versus

UNITED REPUBLIC OF TANZANIA,
Represented by Mr. Gabriel P. MALATA Solicitor General, Office of the Solicitor General

I. THE PARTIES

1. Ladislaus Onesmo (hereinafter referred to as "the Applicant"), is a national of the United Republic of Tanzania, who at the time of the filing of the Application was incarcerated at Butimba Central Prison, in Mwanza, serving thirty (30) years' prison sentence.

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

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, on 29 March 2010, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol, through which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations (hereinafter referred to as "the Declaration"). On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration under Article 34(6) of the Protocol. In accordance with the applicable law, the Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, one year after its deposit, that is, on 22 November 2020.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. On 18 May 2011, the Applicant (Second Accused) and Athuman Idd (First Accused) were accused of assaulting one Msinzi Sebabili (victim) with a knife, at Mchungaji Mwema, Ngara District and subsequently stealing his motorcycle. The motorcycle in question was found in the possession of one, Cosmas Revelian who informed the police that it had been handed over to him for custody by the Applicant and his co-accused.

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37 to 39.

4. The Applicant, was charged jointly with First Accused and Cosmas Revelian (Third accused) with the offence of armed robbery before the District Court at Ngara. By Judgment of 13 March 2012, the Applicant was sentenced to thirty (30) years imprisonment with twenty four (24) strokes of the cane, the First Accused was sentenced to a term of thirty (30) years imprisonment, while the Third accused was acquitted.

5. The Applicant and the First Accused, appealed the conviction and sentence before the High Court of Tanzania sitting at Bukoba[3] and this was dismissed on 27 April 2015 for lack of merit.

6. They then appealed before the Court of Appeal of Tanzania in Criminal Appeal No. 250 of 2015 which, by its Judgment of 15 February 2016, upheld the decision of the High Court. The Applicant then filed the Application before this Court.

B. Alleged violations

7. The Applicant alleges that:
    i. "The Court of Appeal had not considered all the grounds then combined to 2 grounds, and that this procedure of the court had isolated him, as it was violating the fundamental right of being heard in the court of law as required by Article 3(2) of the Charter."
    ii. "The judgment of the Court of Appeal pronounced on the 15.02.2016 was procured by error where the court had evaluated the evidence of the prosecution side widely."
    iii. He was deprived of his right to legal assistance.

[3] Criminal Appeal No.34 of 2012.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed on 23 August 2016. It was served on the Respondent State on 15 November 2016 and to the entities listed in Rule 42(4) of the Rules[4] on 24 January 2017.

9. The Parties filed their pleadings on merits and reparations within the time stipulated by the Court.

10. Written pleadings were closed on 13 August 2021 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

11. The Applicant prays the court to:

    i. Find that the Respondent State has violated his rights provided for under Articles 2, 3(1)(2), 7(1)(c)(d) of the Charter;
    ii. Restore justice where it was over looked, quash conviction and sentence imposed upon him and set him at liberty;
    iii. Grant him reparations pursuant to Article 27(1) of the Protocol to the Court, as follows:
        a. United States Dollars Fifty Thousand (USD50,400) for loss of salary for the duration of the seven (7) years (84 months) imprisonment, at the rate of United States Dollars Two Hundred (USD200) per month, multiplied by three;
        b. United States Dollars Eighty-Four Thousand (USD84,000) for moral damages at the rate of United States Dollars One

[4] Formerly Rule 35(3) of the Rules of Court of 2 June 2010.

Thousand (USD1,000) per month for seven (7) years (84 months) imprisonment;

c. United States Dollars Thirty Thousand (USD30,000), to each of his three children (Beheto Ladislaus, Johanita Ladislaus and Kaizilege Ladislaus), for moral damages;
d. United States Dollars Forty-Thousand (USD40,000) to his spouse, Getrudes Ladislaus, for moral damages;
e. United States Dollars Two Thousand Five Hundred (USD2,500) to each of his parents, Onesmo Petro and Mariam Onesmo;
f. United States Dollars Twenty-Thousand (USD20,000) to each of his two sisters, Merisian Onesmo and Onesta Onesmo.

iv. Order cost on Respondent State;

v. Grant any other order(s) or relief(s) sought that may deem fit to the circumstances of the complaint.

12. The Respondent State prays the Court to rule that:

i. The Court has no jurisdiction to adjudicate over the Application;

ii. The Application has not met the admissibility requirements stipulated under Rule 40(5) of the Rules[5] of the Court and should be declared inadmissible;

iii. The Respondent State did not violate the Applicant's rights provided under Article 2, 3(1)(2) and 7(1) of the Charter;

iv. The Applicant not to be granted reparations and his prayers be dismissed;

v. That the Application lacks merit and be dismissed in its entirety.

vi. The Application be dismissed with cost.

[5] Current Rule 50(2)(e) of the Rules of 25 September 2020.

V. JURISDICTION

13. The Court notes 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 6 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.

14. In accordance with Rule 49(1) of the Rules[6], "the Court shall conduct preliminarily examination of its jurisdiction… in accordance with the Charter, the Protocol and these Rules."

15. On the basis of the above-cited provisions, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

A. Objection based on lack of material jurisdiction

16. The Respondent State objects to the Court's jurisdiction to adjudicate on the matters raised by the Applicant, arguing that, by praying the Court to re-examine the matters of fact and law examined by its judicial bodies, set aside their rulings and order his release, the Applicant is in fact asking the Court to sit as an appellate body. The Respondent State contends that in accordance with Article 3(1) of the Protocol, Rule 26 of the Rules[7] and its decision in the matter of *Ernest Francis Mtingwi v. Malawi*, the Court does not have jurisdiction over these issues.

[6] Formerly Rule 39(1) of the Rules of Court of 2 June 2010.
[7] Current Rule 29 of the Rules of Court of 25 September 2020.

17. The Applicant rebuts the Respondent State's allegation and asserts that the Court has jurisdiction as long as there is a violation of human rights, "on which it has mandate to determine upon and interpret them as to conform with the Charter and Protocol of the Court as well as whether the local court had met the test of international law in adjudicating on the matter in question."

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18. 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 a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.[8]

19. The Court recalls, its established jurisprudence, "that it is not an appellate body with respect to decisions of national courts".[9] 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."[10]

20. In the present case, therefore, the Court will not be sitting as an appellate court, by examining the compliance of the judicial proceedings against the Applicant with the standards set out in the Charter and other human rights instruments ratified by the Respondent State.

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[8] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35; *Kenedy Ivan v. United Republic of Tanzania*, ACtHPR, Application No. 025/2016, Judgment of 28 March 2019 (merits and reparations), § 26; *Mhina Zuberi v. United Republic of Tanzania*, ACtHPR, Application No. 054/2016, Judgment of 26 February 2021 (merits and reparations), § 22; and *Masoud Rajabu v. United Republic of Tanzania*, ACtHPR, Application No. 008/2016, Judgment of 25 June 2021 (merits and reparations), §§ 21 to 23.

[9] *Ernest Francis Mtingwi v. Malawi* (jurisdiction) § 14.

[10] *Kenedy Ivan v. United Republic of Tanzania*, ACtHPR, Application No. 25/2016, Judgment of 28 March 2019 (merits and reparations) § 26; *Armand Guehi v. Tanzania* (merits and reparations), § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. Tanzania* (merits), § 35.

21. Accordingly, the Court dismisses this objection and holds that it has material jurisdiction.

B. Other aspects of jurisdiction

22. The Court notes that its personal, temporal and territorial jurisdiction are not contested by the Respondent State. Nonetheless, in line with Rule 49(1) of the Rules[11], it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

23. In relation to personal jurisdiction, the Court recalls as indicated in paragraph 2 above, that the Respondent State has ratified the Protocol and deposited the Declaration under Article 34(6) of the Protocol with the Chairperson of the African Union Commission. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration. The Court recalls its jurisprudence that the withdrawal of the Declaration does not apply retroactively and only takes effect twelve (12) months after the notice of such withdrawal has been deposited, in this case, on 22 November 2020.[12] This Application having been filed before the Respondent State deposited its notice of withdrawal, is thus not affected by it. Consequently, the Court holds that it has personal jurisdiction.

24. In respect of its temporal jurisdiction, the Court notes that all the violations alleged by the Applicants are based on the judgment by the Court of Appeal on 15 February 2016, that is, after the Respondent State ratified the Charter and the Protocol, and deposited the Declaration. Furthermore, the alleged violations are continuing in nature since the Applicant remains convicted on the basis of what he considers an unfair process.[13] Consequently, the Court holds that it has temporal jurisdiction to examine this Application.

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[11] Formerly Rule 39(1) of Rules of Court, 2 June 2010.
[12] *Andrew Ambrose Cheusi v. Tanzania*, §§ 35 to 39.
[13] *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* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71 to 77.

25. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant occurred within the territory of the Respondent State. Consequently, the Court holds that it has territorial jurisdiction.

26. From the foregoing, the court holds that it has jurisdiction to hear the instant case.

VI. ADMISSIBILITY OF THE APPLICATION

27. Article 6(2) of the Protocol provides that "[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the charter".

28. Pursuant to Rule 50(1) of the Rules[14], "the 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."

29. 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 the following conditions:
>
> a) disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b) comply with the Constitutive Act of the Union and the Charter;
> c) not contain any disparaging or insulting language;
> d) not based exclusively on news disseminated through the mass media;
> e) be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

[14] Formerly Rule 40 Rules of Court of 2 June 2010.

f) be filed 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;

g) not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

A. Objection based on non-exhaustion of local remedies

30. The Respondent State has raised an objection to the admissibility of the Application in relation to the requirement of exhaustion local remedies.

31. Referring to the decision of the African Commission on Human and Peoples' Rights in Communication No. 333/20006, *Sahringon and Others v. Tanzania,* the Respondent State argues that the exhaustion of domestic remedies is a fundamental principle of international law.

32. The Respondent State avers that the Applicant had one further domestic remedy to exhaust, that is, the application for review of the Judgment of the Court of Appeal, pursuant to Rule 66 of the Rules of Procedure of the Court of Appeal, 2009. It therefore, considers that the domestic remedies were not exhausted and, consequently, the Application must be declared inadmissible.

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33. The Applicant refutes the Respondent State's assertion, arguing that he had "no need to look for an extra remedy from the Respondent State as to apply for Review or Revision of the local court, since the framework of the domestic legal system and the court of Appeal being the superior court to which the applicant applied, and his appeal was dismissed…"

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34. The Court recalls that pursuant to Article 56(5) of the Charter, whose requirements are mirrored 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.[15]

35. The Court recalls that it has held that in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had had the opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.[16]

36. 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 15 February 2016. Therefore, the Respondent State had the opportunity to address the violations allegedly arising from the Applicant's trial and appeals.

37. With respect to review, the Court has held that an application for review of the Court of Appeal's judgment is an extraordinary remedy which applicants are not required to exhaust.[17]

38. Consequently, the Court holds that the Applicant has exhausted local remedies as envisaged under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules. Therefore, it dismisses the Respondent State's objection based on non-exhaustion of local remedies.

[15] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.
[16] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 juin 2016) 1 RJCA 624, § 76.
[17] *Mohamed Abubakari v. Tanzania* (merits), § 78.

B. Other conditions of admissibility

39. The Court notes that the requirements of the admissibility of an application laid down in Article 56 sub-articles (1),(2),(3),(4), (6) and (7) of the Charter, which requirements are reiterated in sub-rules 50 (2)(a),(b), (c), (d), (f) and (g) of the Rules[18], are not in contention between the Parties. Nevertheless, the Court must still ascertain that these requirements have been fulfilled.

40. The Court notes that the Applicant has indicated his identity, and holds that the condition set out in Rule 50(2)(a) of the Rules has been met.

41. The Court notes that the claims made by the Applicant seeks to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the African Union stated in Article 3(h) of its Constitutive Act is the promotion and protection of human and peoples' rights. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter, and thus holds that it meets the requirement of Rule 50(2)(b) of the Rules.

42. The Court further notes that the Application does not contain any disparaging or insulting language with regard to the Respondent State, which makes it consistent with the requirement of Rule 50(2)(c) of the Rules.

43. With respect to the requirement set out under Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media.

44. Regarding the filing of the Application within a reasonable period of time, the Court notes that local remedies were exhausted when the Court of Appeal rendered its judgment on 15 February 2016. The Application before this Court

[18] Formerly, Rule 40(1)(2)(3)(4)(6) and (7) of the Rules of 2 June 2010.

was filed six (6) months and seven (7) days later, on 23 August 2016. For the purpose of Rule 50(2)(d) of the Rules, this period of time is manifestly reasonable.

45. Finally, with respect to the requirement laid down in Rule 50(2)(g) of the Rules, the Court finds that the present case 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, the provisions of the Charter or of any legal instrument of the African Union.

46. In light of the foregoing, the Court holds that the instant Application fulfils all admissibility requirements set out under Article 56 of the Charter and Rule 40 of the Rules, and accordingly, declares it admissible.

VII. MERITS

47. The Court notes that the Applicant's alleged violations are related to the right to a fair trial and fall under two categories, namely: i) the allegation related to the assessment of the evidence; and ii) the alleged violation of the right to legal assistance. These allegations fall within the right to a fair trial protected under Article 7(1) of the Charter.

i. Allegation related to the assessment of evidence

48. The Applicant alleges that the Court of Appeal had not considered all the grounds of appeal which were then combined in two grounds and that "… this procedure of the court had isolated him, as it was violating the fundamental right of being heard in the court of law as required by Article 3(2) of the Charter".

49. The Applicant avers that “[t]he judgment of the Court of Appeal pronounced on the 15.02.2016 was procured by error where the court had evaluated the evidence of the prosecution side widely.”

50. The Applicant argues that there were contradictions between the descriptions of the motorcycle that was allegedly stolen and the one that was in his possession. He further argues that there were contradictions between the registration numbers of the two motorcycles. He also submits that the alleged seller of the motorcycle to the victim did not testify in court.

51. The Applicant avers that “the Court of Appeal and its subordinate Court has failed to consider and or had misdirected and non-directed itself on apprising the evidence and or the doctrine of recent possession where all factors therein must co-exist before being relied on”. He adds that “the ownership which is the utmost important of the alleged stolen motor cycle was not properly established and was further doubtful and unreliable.”

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52. The Respondent State submits that the Court of Appeal found that though the Appellants filed separate memoranda of appeals, there were repetitive issues and grounds of appeal from both appellants. As a result, the Court of Appeal consolidated the appeals on three aspects:
    (i) the doctrine of recent possession;
    (ii) proof of, or passing of ownership of the motorcycle from the original owner to the victim of the armed robbery and the adequate description of the motorcycle;
    (iii) the disparity in the registration card number for the motorcycle that was tendered and what was recorded by the trial magistrate to be an exhibit was pointed out as having weakened the case for the prosecution.

53. The Respondent State further submits that both Appellants were given the opportunity to address the court orally, separately, and at no time was the Applicant isolated from the procedure nor was he deprived of his right to be heard. The Respondent State avers that all the grounds of appeal were duly considered by the Court of Appeal.

54. The Respondent State notes that the right to be heard is provided for under Article 7 of the Charter and not Article 3(2) thereof, which provides that every individual shall be entitled to equal protection of the law. The Respondent State therefore submits that the Applicant was accorded both the right to be heard and equal protection of the law as provided by Articles 7 and 3(2) of the Charter, respectively.

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55. The Court notes that the Applicant's alleged violation does not fall under Article 3 of the Charter[19], but rather under Article 7(1), which provides that: 1. "Every individual shall have the right to have his cause heard".

56. The Court observes that the question that arises is whether the Applicant's grounds of appeal were duly examined by the Court of Appeal, as required by Article 7(1) of the Charter. On this issue, the Court has consistently held that:

> [T]he examination of particulars of evidence is a matter that should be left for the domestic courts, considering the fact that it is not an appellate court. The Court may, however, evaluate the relevant procedures before the national courts to determine whether they conform to the standards prescribed by the Charter or all other human rights instruments ratified by the State concerned.[20]

[19] "1.Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law."

[20] *Minani Evarist v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 402, § 54. See also *Ernest Francis Mtingwi v. Tanzania* (jurisdiction), § 14; *Alex Thomas v. Tanzania* (merits), § 130; *Mohamed Abubakari v. Tanzania* (merits), §§ 25 and 26; Kijiji Isiaga *v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.

57. The Court recalls that it has held that "fair trial requires that the imposition of a sentence in a criminal offence, and in particular, a heavy prison sentence, should be based on a strong and credible evidence."[21] Thus, the assessment of all the arguments presented in the appeals is fundamental.

58. In the instant case, the Court notes from the record that, the Applicant's case was heard successively in the District Magistrate's Court, the High Court and the Court of Appeal. The record also shows that the Applicant had the opportunity to participate in all the proceedings, including during the delivery of the judgment. These facts are not disputed by the Applicant. Accordingly, the Court finds that the Applicant has not established the claim that he was excluded from the proceedings before the national courts.

59. On the consolidation of the grounds of appeal, the Court notes that the grounds were synthesized into three (3) as follows: i) the ownership of the motorcycle ii) the disparity between the registration number of the motorcycle and the registration number recorded during the trial and iii) the application of the doctrine of recent possession.

60. As regards the ownership of the motorcycle, the Court of Appeal found that:

> [t]hough the question of proof of ownership was raised we are however of the settled view that PW1 sufficiently explained, and he was believed that he had bought the motorcycle from one Salum Khalifah but at the time of the commission of the crime he had not formally transferred ownership into his name.[22]

61. The Court of Appeal especially noted that the Applicant had not proved that he was the owner of the motorcycle in his possession.[23] Furthermore, the

[21] *Mohamed Abubakari v. Tanzania* (merits), § 174.
[22] Court of Appeal judgment of 15 February 2016, page 5, § 2.
[23] *Idem*, page 7, § 2: "They gave no explanation how the motorcycle came into their possession other through the robbery that was perpetrated against PW1."

Applicant and the Fist Accused contradicted each other on the ownership of the motorcycle.[24]

62. With regard to the disparity of the registration number of the motorcycle and the registration number recorded during the trial, the Court of Appeal found that such contradiction was irrelevant as the evidence of the victim's ownership of the motorcycle was established.[25]

63. The Court notes finally, that the Court of Appeal analysed the doctrine of recent possession and confirmed that all its elements were proven, namely: (i) the property is found with the accused person; (ii) the property is positively identified as that of the complainant; (iii) the property was recently stolen from the complainant; and (iv) the property must relate to the one on the charge sheet. The Court of Appeal therefore dismissed this ground of appeal.

64. The Court notes that the obligation to examine all the arguments on appeal does not imply that they cannot be consolidated in order to facilitate their examination, unless this would result in an injustice. In the instant case, the Court finds no anomaly in the consolidation made by the Court of Appeal and neither has the Applicant demonstrated that such consolidation resulted in any injustice.

65. From the foregoing, the Court holds that the alleged violation by the Applicant has not been established and therefore dismisses this allegation.

[24] *Idem*, page 7, § 1: “the appellants were throwing the blame at each other in connection to possession of the stolen motorcycle.”
[25] *Idem*, page 6, § 2: “… the fact that he [trial magistrate] recorded different number alone cannot be the basis of absolving the appellants of culpability in view of other circumstances connecting them to the commission of the crime. The major question in this case is whether it was proved that the appellants were found with motorcycle that was robbed from PW1…”

ii. The right to free legal assistance

66. The Applicant contends that he was not represented by a lawyer during the proceedings before domestic courts, which he considers to be a violation of Article 7(1)(c) of the Charter.

67. The Respondent State did not respond specifically to this allegation.

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68. The Court notes that Article 7(1)(c) of the Charter, provides that: "Every individual shall have the right to have his cause heard. This comprises: … c) the right to defence, including the right to be defended by Counsel of his choice".

69. The Court has held that, Article 7(1)(c) of the Charter as read together with Article 14(3)(d)[26] of the International Covenant on Civil and Political Rights (ICCPR)[27], establishes the right to free legal assistance where a person cannot afford to pay for legal representation and where the interest of justice so requires.[28] The interest of justice includes where the Applicant is indigent, the offence is serious and the penalty provided by the law is severe.[29]

70. The Court notes that it is clear from the Judgment of the Court of Appeal that the Applicant was not provided free legal assistance throughout the proceedings in the national courts. The Court further notes that it is not disputed

[26] "3.In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: … (d) … To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; …"
[27] The Respondent State ratified the International Covenant on Civil and Political Rights on 11 June 1976.
[28] *Alex Thomas v. Tanzani*a (merits), § 114.
[29] *Alex Thomas v. Tanzania* (merits), § 116 to 124. See also *Mohamed Abubakari v. Tanzania* (merits), §§ 138 to 139; *Minani Evarist v. Tanzania* (merits and reparations), § 68; *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 85; Anaclet *Paulo v United Republic of Tanzania* (merits) (2018) 2 AfCLR 446, § 92.

that the Applicant is indigent, that the offence of armed robbery he was charged with is serious and that the thirty (30) years prison sentence set out as the minimum upon conviction in such cases is severe. Therefore, the interest of justice required that the Applicant should have been provided with free legal assistance, regardless of whether or not he requested for such assistance.

71. The Court therefore holds that by failing to provide the Applicant free legal representation throughout the proceedings before the domestic courts, the Respondent State has violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

VIII. REPARATIONS

72. The Court notes that Article 27(1) of the Protocol stipulates that "lf 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."

73. The Court considers that for reparations claims to be granted, the Respondent State should be internationally responsible, the reparation should cover the full damage suffered, there should be the causal nexus between the wrongful act and the harm caused.[30]

74. The Court also restates that measures that a State could take to remedy a violation of human rights can include restitution, compensation and

[30] *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, §§ 20 to 31; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, §§ 52 to 59; and *Reverend Christopher* R. *Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, §§. 27 to 29.

rehabilitation of the victim, as well as measures to ensure non-repetition of the violations taking into account the circumstances of each case.[31]

75. The Court reiterates that the onus is on the Applicant to provide evidence to justify his prayers.[32] With regard to moral damages, the Court has held that the requirement of proof is not strict [33] since it is presumed that there is prejudice caused when violations are established.[34]

76. The Court has found that the Respondent State violated the Applicant's right to a fair trial by failing to provide him with free legal assistance, contrary to Articles 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

77. It is against these findings that the Court will consider the Applicant's requests for reparation.

A. Pecuniary reparations

78. The Applicant seeks pecuniary reparation for material and moral prejudice.

i. Material prejudice

79. The Applicant alleges that he was a businessman in the hotel and transport industry and that his imprisonment caused him material damage. Therefore, he

[31] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also *Kalebi Elisamehe v. United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgement of 23 November 2020 (merits and reparations), § 96.
[32] *Kennedy Gihana and Others v. Republic of Rwanda*, ACtHPR, Application No. 017/2015, Judgment of 28 November 2019 (merits and reparations), § 139; See also *Reverend Christopher R. Mtikila v. Tanzania* (reparations), § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations), § 15(d); and *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 97.
[33] *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55. See also *Kalebi Elisamehe v. Tanzania*, § 97.
[34] *Ally Rajabu and Others v. United Republic of Tanzania*, ACtHPR, Application 007/2015, Judgment of 28 November 2019 (merits and reparations), § 136; *Armand Guehi v. Tanzania* (merits and reparations), § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania*, ACtHPR, Application 009/2015, Judgement of 28 March 2019 (merits and reparations), § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations), § 55; and *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 97.

prays the Court to grant him reparations in the amount of United States Dollars Fifty Thousand (USD50,400), for loss of salary for the duration of the seven (7) years (84 months) imprisonment, at the rate of United States Dollars (USD200) per month, multiplied by three (3).

80. The Respondent State did not respond specifically to this allegation.

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81. The Court recalls that in order for a claim for material prejudice to be granted, an applicant must show a causal link between the alleged violation and the loss suffered, and further, prove the loss suffered, with evidence.[35]

82. In the instant case, the Court notes that the Applicant has not established the link between the violation found and the compensation that he claims. Furthermore, the Applicant did not submit any documentary evidence to prove the existence of the business, and/or his monthly income before his incarceration.[36] Rather, the Applicant merely based his claim on his incarceration which this Court did not find to be unlawful.

83. The Court therefore dismisses this claim.

ii. Moral prejudice suffered by the Applicant

84. The Applicant prays the Court to grant him reparations in the amount of United States Dollars Eighty Four Thousand (USD84,000), for seven (7) years (84 months) imprisonment, at the rate of United States Dollars (USD1,000) per month.

[35] *Armand Guehi v. Tanzania* (merits and reparations), § 181; *Norbert Zongo & Autres c. Burkina Faso* (reparations), § 62.
[36] *Christopher Jonas v. United Republic of Tanzania,* ACtHPR, Application No. 011/2015, Judgment of 25 September 2020 (reparations), § 20; *Armand Guehi v. Tanzania* (merits and reparations), § 18.

85. The Respondent State, did not respond on this prayer.

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86. The Court notes that the violation it established of the right to free legal assistance caused moral prejudice to the Applicant. The Court therefore, in exercising its discretion, awards an amount of Tanzanian Shillings Three Hundred Thousand (TZS300,000) as fair compensation[37].

iii. Moral prejudice suffered by indirect victims

87. The Applicant prays the Court to award damages for moral prejudice suffered by the indirect victims as follows:

    a. United States Dollars Thirty Thousand (USD30,000) to each of his three children (Beheto Ladislaus, Johanita Ladislaus and Kaizilege Ladislaus), for moral damages;
    b. United States Dollars Forty-Thousand (USD40,000) to his spouse, Getrudes Ladislaus, for moral damages;
    c. United States Dollars Two Thousand Five Hundred (USD2,500) to each of his parents, Onesmo Petro and Mariam Onesmo;
    d. United States Dollars Twenty Thousand (USD20,000) to each of his two sisters, Merisian Onesmo and Onesta Onesmo.

88. The Respondent State, did not respond on this prayer.

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[37] *Mhina Zuberi v. Tanzania* (merits and reparations), § 106; *Anaclet Paulo v. Tanzania* (merits and reparations), § 107; *Minani Evarist v. Tanzania* (merits and reparations), § 85; *Kalebi Elisamehe v Tanzania* (merits and reparations), § 108.

89. The Court notes that with regard to indirect victims, as a general rule, moral prejudice is presumed with respect to parents, children and spouses while for other categories of indirect victims, proof of existence of moral prejudice is required. In general, reparation is granted only when there is proof of spousal relation, of marital status or for other close relatives, documents showing filiation with an applicant, including birth certificates for children and parents, are adduced.[38] In the case, the Applicant has not presented evidence of a marital or family relationship with the alleged indirect victims.

90. In view of the above, the claim for moral damages for the Applicant's family members, as indirect victims, is dismissed.

B. Non-pecuniary reparations

91. The Applicant prays the Court to set him at liberty.

92. The Respondent State submits that the Applicant's prayer to be set at liberty is beyond the jurisdiction of the Court since it can only be granted in exceptional circumstances, which the Applicant has failed to demonstrate and he is serving a lawful sentence provided for by statute.

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93. The Court recalls that it has established that it can only order the release:

> "[I]f an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is

[38] *Norbert Zongo and others v. Burkina Faso* (reparations), § 54; and *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 135; *Léon Mugesera v. Republic of Rwanda*, ACtHPR, Application No. 012/2017, Judgment of 27 November 2020 (merits and reparations), § 148.

based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice."[39]

94. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant's right to a fair trial for failing to provide him with free legal assistance. Without minimising the gravity of the violation, the Court considers that the nature of the violation in the instant case does not reveal any circumstance that signifies that the Applicant's imprisonment is a miscarriage of justice or an arbitrary decision. The Applicant also failed to adduce further specific and compelling circumstances to justify the order for his release.[40]

95. In light of the facts and circumstances indicated above, this prayer is therefore dismissed.

IX. COSTS

96. The Applicant prays the Court that the costs be borne by the Respondent State, which, in turn, prays that the Applicant be ordered to bear the costs.

97. The Court notes that Rule 32(2) of the Rules[41] provides that "unless otherwise decided by the Court, each party shall bear its own costs".

98. The Court finds that the circumstances of the case do not warrant the Court to depart from this provision. Consequently, the Court orders that each party bears its own costs.

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[39] *Minani Evarist v. Tanzania* (merits and reparations), § 82; See also *Jibu Amir alias Mussa and Saidi Ally alias Mangaya v. United Republic of Tanzania*, ACtHPR, Application No. 014/2015, Judgment of 28 November 2019 (merits and reparations), § 96; and *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84; and *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 111.

[40] *Jibu Amir alias Mussa and Saidi Ally alias Mangaya v. Tanzania* (merits and reparations), § 97; *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 112; and *Minani Evarist v. Tanzania* (merits and reparations), § 82.

[41] Formerly Article 30(2) of the Rules of Court of 2 June 2010.

X. OPERATIVE PART

99. For these reasons,

The Court,

Unanimously,

On jurisdiction

i. *Dismisses* the objection to the jurisdiction of the Court;

ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objection to the admissibility of the Application;

iv. *Declares* the Application admissible.

On merits

v. *Finds* that the Respondent State has not violated the Applicant's right to be heard under Article 7(1) of the Charter, for poor assessment of the evidence;

vi. *Finds* that the Respondent State has violated the Applicant's right to defence under Article 7(1)(c) of the Charter as read together with Article14(3)(d) of the International Covenant on Civil and Political Rights, for failure to provide him free legal assistance .

On reparations

Pecuniary reparations

vii. *Dismisses* the Applicant’s prayer for material damages;

viii. *Dismisses* the Applicant’s prayer for reparation for moral prejudice suffered by indirect victims;

ix. *Grants* the Applicant damages for the moral prejudice he suffered and awards him an amount of Three Hundred Thousand Tanzanian Shillings (TZS300,000) as fair compensation;

x. *Orders* the Respondent State to pay the sum awarded under **ix** above, free from tax as fair compensation within six (6) months from the date of notification of this Judgment, failing which it will be required to pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the accrued amount is fully paid.

Non-pecuniary reparations

xi. *Dismisses* the Applicant's prayer for the Court to order his release from prison.

On implementation of the judgment and reporting

xii. *Orders* the Respondent State to submit a report to it within six (6) months of the date of notification of this Judgment 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

xiii. *Decides* that each party shall bear its own costs.

Signed:

Blaise TCHIKAYA, Vice- President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

M-Therese 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 Arusha, this Thirtieth Day of September in the year Two Thousand and Twenty-One, in English and French, the English text being authoritative.