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

CHRIZOSTOM BENYOMA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 001/2016

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

In the Matter of:

Chrizostom BENYOMA
Self-represented

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 Affairs, Ministry of Foreign Affairs and International Cooperation
iv. Ms Nkasori SARAKIKYA, Deputy Director, Human Rights, Principal State Attorney, Attorney General's Chambers
v. Mr Mussa MBURA, Principal State Attorney, Director, Civil Litigation, Office of the Solicitor General
vi. Ms Sylvia MATIKU, Principal State Attorney, Attorney General's Chambers

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

vii. Mr Elisha SUKA, First Secretary- Legal Officer, Ministry of Foreign Affairs and International Cooperation

after deliberation,

renders the following Judgment:

I. THE PARTIES

1. Chrizostom Benyoma, (hereinafter referred to as "the Applicant") is a national of Tanzania who, at the time of filing the Application, was at Butimba Central Prison, Mwanza Region, serving a sentence of life imprisonment having been convicted of the offence of rape.

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

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

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the file that, on the night of 20 January 2000, the Applicant allegedly raped a five-year old minor at her father's home in Kamuli village, Karagwe District. The Applicant was subsequently charged on 25 February 2000, with the offence of rape.

4. On 28 February 2000, on the basis of his guilty plea, the Applicant was convicted of the offence of rape, by the District Court of Karagwe at Kayanga, in Criminal Case No. 46 of 2000, and sentenced him to life imprisonment.

5. On 12 September 2000, the Applicant filed an appeal against the sentence meted out to him on the basis that the trial court ought to have required the Prosecution to present witness testimony to prove the charge against him.

6. In its judgment of 25 May 2010, in Criminal Appeal No. 58 of 2000, the High Court sitting at Bukoba dismissed his appeal and confirmed the Applicant's conviction and sentence.

7. On 8 June 2010, the Applicant filed a further appeal to the Court of Appeal of Tanzania sitting at Mwanza. In its judgment of 24 November 2011 in Criminal Appeal No. 323 of 2010, the Court of Appeal summarily dismissed his appeal.

8. On 11 February 2013, the Applicant filed Miscellaneous Criminal Application No. 11 of 2013 seeking a Review of the Court of Appeal's decision. The application for review was pending by the time he filed the instant Application on 4 January 2016.

B. Alleged violations

9. The Applicant alleges that his right under Article 3(1) and (2) of the Charter on equality before the law and equal protection of the law were violated when the Court of Appeal summarily rejected his appeal.

10. The Applicant states that that his right to be tried within a reasonable time by an impartial court or tribunal under Article 7(1)(d) of the Charter has been violated because his application to the Court of Appeal for review of its judgment of 24 November 2011, had not been listed or heard as at the time of filing this Application, yet other such applications filed after he had filed his, had been determined.

11. The Applicant alleges that his rights to be heard and be provided with counsel of one's choice under Article 7(1)(c) and 8(d) of the Charter which, according to him, is the same as the provisions of Article 13(6)(a) and 107A(2)(b) of the Constitution of the Respondent State, were violated as he had no legal representation during the proceedings against him.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

12. The Application was filed on 4 January 2016 and was served on the Respondent State on 25 January 2016.

13. The parties filed their pleadings on merits within the time stipulated by the Court.

14. Pleadings on merits were closed on 6 October 2016 and the parties were duly notified.

15. On 27 September 2018, the parties were informed that the Court would henceforth determine the merits and reparations together and that submissions on reparations should then be filed.

16. The Applicant filed the submission on reparations within the time stipulated by the Court. Despite several extensions of time, the Respondent State did not file the Response to the Applicant's submissions on reparations.

17. Pleadings on reparations were closed on 12 June 2019 and the parties were duly notified.

18. On 26 August 2019 the Respondent State filed, out of time, its Response on reparations together with a request that this be accepted as properly filed. On 26 September 2019, the Court issued an Order on re-opening pleadings, to accept the Respondent State's Response on reparations. This Order and the Response were served on the Applicant on 28 September 2019 for his Reply thereto, if any.

19. Pleadings on reparations were again closed on 19 August 2021 and the parties were duly notified

IV. PRAYERS OF THE PARTIES

20. The prayers of the Applicant as submitted in the Application, are that the Court "restore justice where it was overlooked and quash both conviction and sentence imposed upon him and set him at liberty", that he be "granted reparation pursuant to Article 27(1) of the Protocol of the court" and "any other order(s) if relief(s) sought that may deem fit in the circumstances of the complaint".

21. In the Reply to the Respondent State's Response, the Applicant prays the Court to grant the following orders with respect to the Jurisdiction and Admissibility of the Application:
    i. That the African Court has jurisdiction to adjudicate over this Application,
    ii. That the Application has met the admissibility requirements as stipulated in Rule 40 (5) and (6) of the Rules of the Court,
    iii. That the Application be cleared admissible and allowed with costs.

22. In the Reply to the Respondent State's Response, the Applicant prays the Court to grant the following orders with respect to the merits of the Application:
    i. That the Government of the United Republic of Tanzania is in violation of the Applicant's rights under Article 3(1) and (2), 7(1)(c) of the African Charter on Human and Peoples' Rights
    ii. That the Government of the United Republic of Tanzania is in violation of Applicant's Rights stipulated under Article 13(6) (a) and 107 A (2) (b) of the Constitution of the United of Republic of Tanzania 1977 and Article 7(1)(a) of the African Charter on Human and Peoples' Rights
    iii. That the Applicant's Application should be allowed for the strong merit
    iv. That cost be borne by the Respondent.

23. In his submissions on reparations, the Applicant prays the Court "to order my acquittal from the custody as basic reparation while the reparation of payment may be considered and assessed by the court on my custody period per the nation ration of a citizen income per year".

24. In the Response, with regard to the Court's jurisdiction and admissibility of the Application, the Respondent State prays the Court to rule as follows:
    a. That the Application has not evoked the jurisdiction of the Honourable Court.
    b. That the Application has not met the admissibility requirements provided under Rule 40(5) of the Rules of the Rules of Court.
    c. That the Application has not met the admissibility requirements provided under Rule 40(6) of the Rules of the Rules of Court.

d. That the Application be declared inadmissible and duly dismissed.

25. With regard to the merits of the Application, the Respondent State prays that the Court grants the following orders:
    i. That the Respondent State is not in violation of the Applicants rights under Article 3 (1) and (2) of the African Charter on Human and Peoples' Rights,
    ii. That the Respondent State is not in violation of the Applicants right under Article 7 (1) (c) of the African Charter on Human and Peoples' Rights,
    iii. The Respondent State is not in violation of the Applicants rights as provided for under Article 13 (6) (a) and 107A (2) (b) of the Constitution of the United Republic of Tanzania and Articles 7 (1) (c) and 8 (d) of the African Charter on Human and Peoples' Rights,
    iv. That the Application should be dismissed for lack of merit, and
    v. That costs be borne by the Applicant.

26. On reparations, the Respondent State prays for the following declarations and orders from the Court:
    i. A Declaration that the interpretation and application of the Protocol and Charter do not confer appellate criminal jurisdiction to the Court to acquit the Applicant
    ii. A Declaration that the Respondent State has not violated the African Charter or the Protocol and that the Applicant was convicted fairly out of due process of the law.
    iii. An Order to dismiss the Application for Reparations.
    iv. Any other Order this Hon. Court might deem right and just to grant under the prevailing circumstances.

V. JURISDICTION

27. The Court observes 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 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.

28. The Court further notes that in terms of Rule 49(1) of the Rules: "The Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, the Protocol and these Rules". [3]

29. 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 the lack of material jurisdiction

30. The Respondent State has raised an objection that this Application fails to meet the requirements of Article 3(1) of the Protocol and Rule 26 of the Rules[4] since the Applicant is calling for the Court to sit as an appellate Court and reconsider the decision of the Respondent's State's highest court, the Court of Appeal of Tanzania. The Respondent State argues that the Court has not been vested with jurisdiction to overturn a conviction and sentence delivered by the Court of Appeal.

31. Citing the Court's jurisprudence in *Ernest Francis Mtingwi v Malawi* [5] the Respondent State argues that the Court cannot grant the Applicant's prayer to "quash both the conviction and sentence imposed upon the Applicant and set him at liberty" because "Article 3 (1) of the Protocol does not provide the Court the jurisdiction to act as an appellate court".

[3] Formerly, Rule 39(1) of Rules of Court, 2 June 2010.
[4] Current Rule 29 of the Rules of Court, 25 September 2020.
[5] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013), 1 AfCLR 190.

32. The Respondent State further states that the Application seeks the Court to review the evidence brought before the Court of Appeal of Tanzania which is a matter that should be left solely to its courts.

33. The Applicant maintains that the Court has jurisdiction to restore justice where it is overlooked.

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34. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instruments ratified by the Respondent State.[6]

35. The Court recalls, its established jurisprudence, "that it is not an appellate body with respect to decisions of national courts".[7] 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."[8]

36. In the present case, therefore, the Court will not be sitting as an appellate court nor reviewing the evidence brought before the Court of Appeal of Tanzania, by examining the compliance of the judicial proceedings against the Applicant with the standards set out in the Charter and other instruments ratified by the Respondent State. Consequently, the Court dismisses the objection that, by hearing the application, it would be sitting as an appellate

[6] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015), 1 AfCLR 465 §§ 45 ; *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 65 § 34 -36 ; *Jibu Amir alias Mussa and another v. United Republic of Tanzania*, ACtHPR, Application No. 014/2015, Judgment of 28 November 2019 (merits and reparations) § 18; *Masoud Rajabu v United Republic of Tanzania*, ACtHPR, Application No. 008/2016 Judgment of 25 June 2021 (merits and reparations) § 21.

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

[8] *Kenedy Ivan v. United Republic of Tanzania*, ACtHPR, Application No. 25/2016, Judgment of 28 March 2019 (merits and reparations) § 26; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 247 § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287 § 35.

court and reviewing the evidence considered by the Respondent State's Court of Appeal.

B. Other aspects of jurisdiction

37. The Court observes that no objection has been raised with respect to its personal, temporal and territorial jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

38. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this judgment that the Respondent State, on 21 November 2019, deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.[9] Since any such withdrawal of the Declaration takes effect twelve (12) months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.[10] This Application having been filed before the Respondent State deposited its notice of withdrawal is thus not affected by it.

39. In light of the above, the Court finds that it has personal jurisdiction to examine the present Application.

40. With respect to its temporal jurisdiction, the Court notes that, the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the alleged violations are continuing in nature since the Applicant remains convicted on the basis of what he

[9] *Ingabire Victoire Umuhoza v Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562 § 67.
[10] *Andrew Ambrose Cheusi v.* Tanzania (merits and reparations), §§ 35-39.

considers an unfair process. Consequently, the Court holds that it has temporal jurisdiction to consider the Application .[11]

41. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that it has territorial jurisdiction.

42. In light of all the above, the Court holds that it has jurisdiction to determine the present Application.

VI. ADMISSIBILITY

43. Pursuant to Article 6(2) of the Protocol, "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

44. In line with Rule 50(1) of the Rules,[12] "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".

45. The Court notes that 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 of the following conditions:
>
> a) Indicate their authors even if the latter request anonymity;
> b) Are compatible with the Constitutive Act of the African Union and with the Charter;

[11] *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 – 77.
[12] Formerly Rule 40 of the Rules of Court, 2 June 2010.

c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
d) Are not based exclusively on news disseminated through the mass media;
e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
f) Are submitted 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, and
g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

A. Objections to the admissibility of the Application

46. The Respondent State has raised two objections to the admissibility of the Application. The first objection relates to the requirement of exhaustion of local remedies and the second relates to whether the Application was filed within a reasonable time.

i. Objection based on non-exhaustion of local remedies

47. The Respondent State argues that the Applicant is raising before this Court, allegations of violations of fair trial rights which he never raised before the High Court and the Court of Appeal of Tanzania. The Respondent State further argues that the Basic Rights and Duties Enforcement Act provides for a procedure for enforcement of constitutional basic rights which the Applicant would have utilised to file a constitutional petition in this regard, at the High Court.

48. In his Reply, the Applicant states that he filed an application for Review of the Court of Appeal's judgment which was pending by the time he filed this Application.

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49. The Court notes that pursuant to Article 56(5) of the Charter, whose provisions are restated 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.[13]

50. 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.[14]

51. 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 24 November 2011. Therefore, the Respondent State had the opportunity to address the violations allegedly arising from the Applicant's trial and appeals.

52. Furthermore, the Court has previously held that the constitutional petition within the Respondent State's judicial system is an extraordinary remedy which applicants are not required to exhaust before filing their applications before this Court.[15]

[13] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017), 2 AfCLR 9, §§ 93-94.
[14] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016), 1 AfCLR 599 § 76.
[15] *Alex Thomas v. Tanzania* (merits) §§ 63-65.

53. Similarly, 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.[16] The Court therefore finds that, although the Applicant's application for review was pending by the time he filed this Application, he is deemed to have exhausted local remedies since the Court of Appeal of Tanzania, the highest judicial organ in the Respondent State, had, by its judgment of 24 November 2011, upheld his conviction and sentence following proceedings which, the Applicant alleges violated his rights.

54. In light of the foregoing, the Court dismisses the Respondent State's objection based on the non-exhaustion of local remedies.

ii. Objection based on the failure to file the Application within a reasonable time

55. The Respondent State argues that in the event that the Court finds that the Applicant exhausted local remedies, the Court should find that the Application has failed to comply with the provisions of Rule 40(6) of the Rules[17]. The Respondent argues that the Application was not filed within a reasonable time after the local remedies were exhausted.

56. The Respondent State recalls that, the judgment of the Court of Appeal was delivered on 24 November 2011and that this Application was filed on 4 January 2016. The Respondent State notes that a period of four (4) years and one (1) month elapsed in between. Relying on the decision of the African Commission on Human and Peoples' Rights (the Commission) in *Majuru v Zimbabwe*,[18] the Respondent State argues that the time limit established for filing applications is six (6) months after exhaustion of local

[16] *Mohamed Abubakari v. Tanzania*, (merits) (3 June 2016) 1 AfCLR 59 § 78 78.
[17] Corresponding to Rule 50(2)(f) of the Rules of 25 September 2020.
[18] African Commission on Human and Peoples' Rights Communication 308/05 *Michael Majuru v Zimbabwe* (2008) AHRLR 146 (ACHPR 2008).

remedies and therefore the Applicant ought to have filed the Application within six (6) months after the Court of Appeal's judgment

57. The Applicant alleges that his Application complies with Article 40 (6) of the Rules because he appealed to both the High Court and the Court of Appeal, the latter being the Respondent State's highest court. The Applicant argues that he delayed in filing this Application because he was waiting for his application for Review of the Court of Appeal's judgment, which he filed on 11 February 2013, to be finalised.

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58. The Court notes that neither the Charter nor the Rules specify the exact time within which Applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules merely provide that Applications must be filed "…within 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".

59. The Court has held "…that the reasonableness of the time frame for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[19]

60. From the record, the Applicant exhausted local remedies on 24 November 2011, being the date, the Court of Appeal delivered its judgment on his appeal. The Applicant then filed the instant Application on 4 January 2016. The Court has to therefore assess whether this period of four (4) years, one (1) month and twenty four (24) days is 'reasonable' in terms of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

[19] *Norbert Zongo and Others v Burkina Faso* (preliminary objection) (25 June 2013), 1 AfCLR 197 § 121.

61. The Court has previously considered the personal circumstances of applicants and found that, incarcerated, lay and indigent applicants being restricted in their movements, would have little or no information about the existence of the Court. It has thus held that, in those circumstances, the period ranging from, four (4) years and thirty six (36) days[20], four (4) years, two (2) months and twenty three (23) days[21] and four (4) years, nine (9) months and twenty three (23) days[22] that applicants took to file their applications after exhaustion of local remedies, was reasonable.[23]

62. The Court has also considered as a relevant circumstance, the fact of filing of applications for review before the Court of Appeal of the Respondent State and which were either pending or had been determined by the time they filed their applications before this Court. In such cases, the Court has held that it was reasonable for those applicants to await the outcome of that review process. The Court has therefore considered that, this was an additional factor that justified the delay by those applicants in filing their applications before this Court.[24]

63. The Court notes that on 11 February 2013, the Applicant filed an Application for Review of the Court of Appeal's decision which was pending, by the time he filed the application before this Court on 4 January 2016.

64. The Court finds that it was reasonable for the Applicant to wait for his application for review of the Court of Appeal's judgment to be determined and this contributed to him not filing the Application earlier than he did.

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[20] *Kenedy Ivan v United Republic of Tanzania*, ACtHPR, Application No. 025/2016 Judgment of 28 March 2019 (merits and reparations) § 53.
[21] *Jibu Amir Mussa and another v Tanzania* § 51.
[22] *Andrew Ambrose Cheusi v Tanzania* § 71.
[23] *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 101 § 54; *Amiri Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018), 2 AfCLR 344 § 83; *Armand Guehi v. Tanzania* (merits and reparations) *§* 56; *Werema Wangoko v. Tanzania* (merits and reparations) *§* 49*; Kijiji Isiaga v. Tanzania* (merits) (21 March 2018), 2 AfCLR 218 § 55.
[24] *Armand Guehi v. Tanzania (*merits and reparations) § 56; *Werema Wangoko v. Tanzania*, (merits and reparations) §§ 48-49.

65. In the Court's view, these circumstances constitute reasonable justification for the time the Applicant took to file the Application after the judgment of the Court of Appeal on 24 November 2011.

66. In light of the above, the Court, therefore, dismisses the Respondent State's objection to the admissibility of the Application based on failure to file the Application within a reasonable time.

B. Other conditions of admissibility

67. The Court notes, from the record, that the Application's compliance with the requirements in Article 56 sub-articles (1),(2),(3),(4) and (7) of the Charter, which requirements are reiterated in sub-rules 50 (2)(a),(b), (c), (d), and (g) of the Rules, are not in contention between the Parties. Nevertheless, the Court must still ascertain that these requirements have been fulfilled.

68. Specifically, the Court notes that, according to the record, the condition laid down in Rule 50(2)(a) of the Rules is fulfilled since the Applicant's identity is clear.

69. The Court notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof 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.

70. 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.

71. Regarding the condition contained in Rule 50(2)(d) of the Rules, the Court notes that the Application is not based exclusively on news disseminated through the mass media.

72. 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 or the provisions of the Charter.

73. As a consequence of the foregoing, the Court finds that the Application fulfils all the admissibility requirements set out under Article 56 of the Charter, as restated in Rule 50(2) of the Rules, and accordingly finds it admissible.

VII. MERITS

74. The Applicant alleges violation of the right to equality before the law and equal protection of the law under Article 3(1) and (2) of the Charter, the right to be heard and be provided counsel of one's choice under article 7(1)(c) and 8(d) of the Charter corresponding to Article 13(6)(a) and 107A(2)(b) of the Constitution of the Respondent State and the right to be tried within a reasonable time by an impartial court or tribunal under Article 7(1)(d) of the Charter.

A. Alleged violation of the right to a fair trial

75. The Court will first consider the alleged violation of the right to be heard and be provided counsel of one's choice as it is the first occurrence in the chronology of events in the proceedings against the Applicant. These allegations fall within the right to a fair trial protected under Article 7(1) of the Charter.

i. Alleged violation of the right to have one's cause heard

76. The Applicant alleges that he was denied the right to be heard because his plea was taken un-procedurally, thus the prosecution did not have proof of his guilty plea.

77. The Respondent State avers that the taking of Applicant's plea during the proceedings at the District Court was procedural. The Respondent State maintains that the charge was read over and explained to the Applicant and he did not contest it or state that he did not understand the matter and that he therefore he needed legal assistance.

78. The Respondent State argues that, furthermore, Section 228(2) of the Criminal Procedure Act provides for the procedure to be adopted when a person pleads guilty and confesses to an offence. The procedure is as follows:

> If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him unless there appears to be sufficient cause to the contrary.

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79. The Court notes that Article 7 (1) of the Charter provides that "Every individual shall have the right to have his cause heard".

80. The Court notes that, the Applicant avers that the irregularity in the taking of his plea should have resulted in the District Magistrate's Court not accepting his guilty plea and that by doing so, that court acted contrary to the requirement of Article 7(1) of the Charter.

81. The Court notes that the record shows that when the facts and particulars of the charge were read out to the Applicant when he was arraigned before the District Magistrate's Court, the Applicant was asked whether he had committed the offence and understood the facts as presented, to which he replied "Yes it is true". The Applicant was then accorded the right to mitigate his sentence. He prayed the court to reduce his sentence due to the fact that he was drunk while committing the offence. It is therefore clear that the Applicant was accorded the opportunity to respond to the charge against him, which he admitted to and he was therefore sentenced on that basis.

82. The Court also notes that, during the appeals at the High Court and the Court of Appeal, the appellate courts rejected the Applicant's claim that his plea was unequivocal because he had admitted to committing the offence.

83. The Court finds therefore that, nothing on the record shows that the domestic proceedings with regard to the Applicant's plea-taking for the offence he was charged with were contrary to Article 7(1) of the Charter.

84. Consequently, the Court finds that the Respondent State did not violate the Applicant's rights under Article 7(1) of the Charter.

ii. Alleged violation of the right to be defended by counsel of one's choice

85. The Applicant argues that the failure to provide him free legal representation during the proceedings at the national courts is a violation of his right to be heard and be defended by counsel of his choice as provided by Article 7(1)(c) and 8(d) of the Charter and Article 13(6)(a) and 107A(2)(b) of the Constitution of the Respondent State.

86. The Applicant states that this failure started from the trial and continued throughout his appeals, resulting in an injustice and prejudice to him and that it ought to vitiate the conviction and sentence meted out to him.

87. The Respondent State disputes the claim that the Applicant was not provided with legal aid during the proceedings at the District Court, the High Court and the Court of Appeal.

88. The Respondent State avers that Article 1(6)(a) of its Constitution provides for the right to a fair trial as follows:

> When the rights and duties of any person are being determined by the Court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the Court or of the other agency concerned.

89. The Respondent State argues that legal aid is not mandatory for persons, such as the Applicant, who are charged with the offence of rape and that therefore, the Applicant should have applied for legal since it is a right guaranteed to all in the Respondent State.

90. The Respondent adds that legal aid is not an automatic right that people can benefit from because it is difficult to get a lawyer of one's choice. This is due to the fact that the Respondent State has insufficient lawyers, financial constraints and limited resources. The Respondent State asks the Court to take into account the efforts it has made in this regard, such as making provision of legal aid mandatory for serious offences such as murder.

91. The Respondent State argues that the Applicant was never prejudiced nor was he at any disadvantage due to not having a defence counsel. The Respondent State maintains that, the Applicant was always informed of the allegations and procedures against him and that everything was explained to him to enable him defend himself.

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92. 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".

93. The Court notes that the Charter does not have an Article 8(d), therefore this will be considered as an error on the Applicant's part.

94. The Applicant has also alleged that the failure to provide him free legal assistance was a violation of Article 13(6)(a)[25] and 107A(2)(b)[26] of the Constitution of the Respondent State. Although these provisions of the Respondent State's Constitution do not correspond to Article 7(1)(c) of the Charter, the Court has previously held that in determining, whether the State has complied with the Charter or any other human rights instrument it has ratified, it does not apply the domestic law in making this assessment.[27] The Court will therefore not apply the provisions of the Respondent State's Constitution cited by the Applicant.

95. The Court has interpreted Article 7(1)(c) of the Charter in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR)[28], and determined that the right to defence includes the right to be provided with free legal assistance.[29]

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[25] This Article provides that: "To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely: (a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned"

[26] This Article provides that: 107A (2) In delivering decisions in matters of civil and criminal matters in accordance with the laws, the court shall observe the following principles, that is to say … (b) not to delay dispensation of justice without reasonable ground.

[27] *Mohamed Abubakari v Tanzania* (merits) § 28; *Kennedy Owino Onyachi and another v. Tanzania* (merits) (§ 39.

[28] The Respondent State became a State Party to ICCPR on 11 June 1976.

[29] *Alex Thomas v. Tanzania*, (merits) § 114; *Kijiji Isiaga v. Tanzania* (merits) (§ 72; *Kennedy Owino Onyachi and another v. Tanzania* (merits) § 104.

96. The Court has also determined that where accused persons are charged with serious offences which carry heavy sentences and they are indigent, free legal assistance should be provided as of right, whether or not the accused persons request for it.[30]

97. The Court notes the provisions of Article 14(3)(d) of the ICCPR Court which provides that:

> 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; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

98. The Court notes that, once a person is arrested on suspicion of having committed a serious offence which carries a heavy penalty and where they are indigent, they should promptly be provided with free legal assistance.[31]

99. The Court observes that although he faced a serious charge of rape which carries a heavy penalty, nothing on the record shows that, upon his arrest the Applicant was promptly informed of the right to legal assistance or that should he be unable to pay for such assistance, it would be provided to him free of charge.

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[30] *Alex Thomas v. Tanzania*, (merits) § *123*; *Kijiji Isiaga v Tanzania* (merits) § 78; *Kennedy Owino Onyachi and another Charles Mwanini Njoka v. Tanzania* (merits) §§ 104 and 106.

[31] See ACHPR, *Abdel Hadi Ali Radi & Others v Republic of Sudan* Communication 368/09, where the African Commission on Human and Peoples' Rights referred to Articles 25 and 26 of its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and Article 20(c) of the Robben Island Guidelines (Guidelines and Measures for the Provision and Prevention of Torture, Cruel, Inhuman and Degrading Treatment or Punishment in Africa) which it adopted to elaborate on the right to be provided legal assistance promptly after arrest; See also ECHR Case of *Pavovits v. Cyprus*, Application No. 4268/04, Judgment of 11 December 2008 (merits), § 64 and *Case of A.T. v Luxembourg*, Application No. 30460/13, Judgment of 9 April 2015 (merits), §§ 64, 65 and 75.

100. The record before the Court shows that the Applicant pleaded guilty of the charge, before the District's Magistrate's Court, without having the benefit of legal advice prior to the taking of his plea. The fact that the Applicant pleaded guilty to the charge did not discharge the Respondent State's obligation to provide the Applicant with free legal assistance during the trial, as, in any event, the Respondent State could not have foreseen how he would plead.

101. The Court has also previously held that, the obligation to provide free legal assistance to indigent persons facing serious charges which carry a heavy penalty is for both the trial and appellate stages. [32]

102. The Court notes that the Applicant was also not provided free legal assistance for the appeal proceedings at the High Court and the Court of Appeal although he chose to be absent during the appeal proceedings at the High Court and to appear in person for the appeal before the Court of Appeal.

103. As a consequence of the foregoing, the Court therefore concludes that the failure of the Respondent State to provide the Applicant with free legal assistance during his trial and appeals was a violation of the right to defence under Article 7(1) (c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

iii. Alleged violation of the right to be tried within a reasonable time

104. The Applicant alleges that the delay in hearing his application filed on 11 February 2013 for Review of the Court of Appeal's decision on 24 November 2011 constitutes a violation of Article 7 (1) (d) of the Charter and of Article 107 A (2) of the Respondent's Constitution.

[32] *Alex Thomas v Tanzania* (merits) § 124; *Wilfred Onyango Nganyi 9 Others v. United Republic of Tanzania* (merits) (18 March 2016) 1 AfCLR 507§183.

105. The Respondent State denies this allegation on the basis that, an application for Review is an extraordinary remedy and therefore such cases are decided on a first come, first serve basis. The Respondent State argues that the Court should take into consideration the high number of cases pending review at the Court of Appeal and that court's capacity to hold Review Sessions.

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106. The Court notes that, Article 7 (1) (d) of the Charter provides for the "right to be tried within a reasonable time by an impartial court or tribunal".

107. In the instant case, the Court notes that, other than stating that applications for review filed after he filed his own such application before the Court of Appeal, were determined before his own, the Applicant has not provided evidence in support of his claim. The Court finds therefore that the Applicant's general statement cannot sustain the claim that the Applicant's right has been violated.

108. The Court therefore finds that there is no violation of Article 7(1) (d) of the Charter.

B. Alleged violation of the right to equality before the law and equal protection of the law

109. The Applicant alleges that although the Court of Appeal considered his appeal, it summarily rejected it, resulting in a violation of Article 3 (1) and (2) of the Charter. He further alleges that even though the Court of Appeal faulted the procedure followed by the High Court on appeal, it adopted the same procedure which was erroneous. He alleges that this error occurred when the Court of Appeal continued to hear the Appeal and making the "conclusion of rejecting it summarily on ground that it was satisfied that the appeal had been lodged without sufficient ground of complaint".

110. The Respondent State argues that this allegation lacks merit because, by admitting to consider the appeal, the Court of Appeal was rectifying a procedural irregularity occasioned by the High Court. The Respondent State elaborates that, Section 4 (2) of the Appellate Jurisdiction Act allows the Court of Appeal to invoke its powers of Revision on a matter which was the basis of a decision at the High Court.

111. The Respondent State argues that, the Court of Appeal had to rectify the procedure undertaken by the High Court to hear the Applicant's appeal because Section 360 (1) of the Criminal Procedure Act provides that:

> No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a subordinate Court except as to the extent or legality of the sentence.

112. The Respondent State avers further, that the Court of Appeal's action is strengthened by the fact that the High Court determined that the Applicant's plea at the District Court was unequivocal, therefore the High Court should not have proceeded to hear the appeal on merits.

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113. The Court notes the provisions of Article 3 (1) of the Charter which provides that "Every individual shall be equal before the law" and Article 3 (2) of the Charter provides that "Every individual shall be entitled to equal protection of the law."

114. In the instant case, the Court notes that there is nothing on the record to show that the Applicant's appeals at the High Court and the Court of Appeal were heard in an irregular manner in contravention of Article 3 of the Charter.

115. The Court observes that, where an accused person pleads guilty, the Respondent State's law allows appeals only on sentencing and not on conviction. The Court notes that, the High Court considered the Applicant's appeal on both the conviction and sentence on the basis that, although the Applicant filed it as an appeal against the sentence only, the grounds he set out in support of the appeal related to the conviction.

116. The record shows that the Court of Appeal subsequently dismissed the Applicant's appeal on the basis that the High Court ought not to have considered the appeal on both the conviction and sentence, rather only on the sentence, since the Applicant had pleaded guilty. Since the sentence meted out by the District Court was the minimum sentence for that offence, in the circumstances, the Appeal could therefore not be sustained and was therefore dismissed.

117. The Court notes that, in any event, the Applicant has not established that he was treated differently from other persons who were convicted of their own plea of guilty for the offence of rape, as he was.

118. The Court therefore finds that the Respondent State did not violate the Applicant's right provided under Article 3(1) and (2) of the Charter.

VIII. REPARATIONS

119. The Applicant asks that the Court "grant reparations and order such other measures or remedies it deems fit." Specifically on pecuniary reparations, the Applicant prays "reparation of payment may be considered and assessed by the court on my custody period per the nation ration of a citizen income per year". On non-pecuniary reparations, the Applicant requests the Court to annul his conviction and sentence and order his release from prison.

120. The Respondent State asserts that the Applicant has failed to establish the causal link between the alleged violations and the alleged harm suffered by the Applicant. Citing the Court's jurisprudence in the matter of *Lohe Issa Konate v Burkina Faso*, the Respondent State argues that the Court lacks the criminal appellate jurisdiction to acquit the Applicant. The Respondent State prays the Court to declare that the Applicant was convicted fairly out of due process of the law. It therefore pray**s** that the Applicant's prayers for reparations should be dismissed and the Court should make any orders it will deem right and just to grant.

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121. Article 27(1) of the Protocol provides that "If the Court finds that there has been violation of a human or peoples' rights it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

122. The Court considers that, as it has consistently held, for reparations to be granted, the Respondent State should first be internationally responsible of the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Furthermore, and where it is granted, reparation should cover the full damage suffered. Finally, the Applicant bears the onus to justify the claims made.[33]

123. As this Court has earlier found, the Respondent State violated the Applicants' rights to be defended by counsel of one's choice guaranteed under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR. The prayers for reparation will therefore be examined against this finding.

[33] See *Armand Guehi v. Tanzania* (merits and reparations), § 157. See also, *Norbert Zongo and Others v. Burkina Faso* ((reparations) (5 June 2015), 1 AfCLR 258, §§ 20-31; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016), 1 AfCLR 346, §§ 52-59; and *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014), 1 AfCLR 72§§ 27-29.

124. As stated earlier, the Applicants must provide evidence to support their claims for material prejudice. The Court has also held previously that the purpose of reparations is to place the victim in the situation prior to the violation.[34]

125. The Court has further held, with respect to moral loss, it exercises judicial discretion in equity.[35] In such instances, the Court has adopted the practice of awarding lump sums.[36]

A. Pecuniary reparations

i. Material prejudice

126. The Applicant prays "reparation of payment may be considered and assessed by the court on my custody period per the nation ration of a citizen income per year".

127. The Respondent State argues that the Applicant has not clearly indicated the alleged loss or damage suffered as a result of the alleged violation to enable the Court fairly assess and award reparations. It argues that the Applicant has not provided evidence in support of his claim as required, pursuant to the Court's decision in the matter of *Reverend Christopher Mtikila v Tanzania*. The Respondent State further argues that, awarding the Applicant reparations on the basis of his unsubstantiated claims will defeat the purpose of reparations which is '*restitutio in integrum'*. It therefore submits that the Court should dismiss the Applicant's requests for reparations.

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[34] See *Armand Guehi v. Tanzania* (merits and reparations); *Lucien Ikili Rashidi v. United Republic of Tanzania,* ACtHPR, Application No. 009/2015. Judgment of 28 March 2019 (merits and reparations), § 118; and *Norbert Zongo and Others v. Burkina Faso* (reparations), §§ 57-62.
[35] See *Armand Guehi v. Tanzania* (merits and reparations), § 181; and *Lucien Ikili Rashidi v. Tanzania* (merits and reparations), § 62.
[36] See *Norbert Zongo and Others v. Burkina Faso* (reparations), § 62.

128. The Court notes that, in order for a claim for material prejudice to be granted, the Applicant must show a causal link between the alleged violation and the loss suffered, and further, prove the loss suffered with evidence.[37]

129. 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, he has not provided any evidence to prove that he suffered any loss. Rather, the Applicant based his claim on his incarceration which this Court did not find unlawful.

130. The Court therefore dismisses this claim.

ii. Moral Prejudice

131. 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 (TZS 300,000) as fair compensation.[38]

B. Non-pecuniary reparations

132. Regarding the order to annul his conviction and sentence, the Court notes that it has not determined whether the conviction and sentence of the Applicant was warranted or not, as this is a matter to be left to the national courts. The Court is rather concerned with whether the procedures in the national courts comply with the provisions of human rights instruments ratified by the Respondent State.

[37] See *Armand Guehi v. Tanzania* (merits and reparations), § 181; *Norbert Zongo and Others v. Burkina Faso* (reparations), § 62.
[38] Minani *Evarist v United Republic of Tanzania* (merits and reparations) (21 September 2018), 2 AfCLR 402§ 85.

133. In this regard, the Court is satisfied that there is nothing on the record establishing that the manner in which the Respondent State convicted and sentenced the Applicant occasioned any error or miscarriage of justice to the Applicant to warrant its intervention, as the record shows that it was based on a guilty plea, that was procedurally entered.

134. With regard to the Applicant's release from prison, the Court has established that it would make such an order, "if an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice".[39]

135. 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 elaborate on specific and compelling circumstances to justify the order for his release.[40]

136. In view of the foregoing, this prayer is therefore dismissed.

IX. COSTS

137. The Applicant has prayed that costs be borne by the Respondent State.

[3939] *Minani Evarist v. Tanzania* (merits and reparations), § 82; See also *Jibu Amir alias Mussa and another v. Tanzania* (merits and reparations), § 96; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84; *Kalebi Elisamehe v. United Republic of Tanzania,* ACtHPR, Application No 028/2015 Judgment of 26 June 2020 (merits and reparations), § 111.

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

138. The Respondent State has prayed that costs be borne by the Applicant.

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139. Pursuant to Rule 32 of the Rules of Court[41] "unless otherwise decided by the Court, each party shall bear its own costs".

140. The Court finds that there is nothing in the instant case, warranting it to depart from this provision. Consequently, the Court orders that each party shall bear its own costs.

X. OPERATIVE PART

141. For these reasons,

THE COURT,

Unanimously:

On jurisdiction

i. *Dismisses* the objections to its material jurisdiction;
ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objections 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 equality before the law and equal protection of the law under Article 3(1) and (2) of the Charter*;*

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

vi. *Finds* that the Respondent State has not violated the Applicant's right to have his cause heard, under Article 7(1) of the Charter;

vii. *Finds* that the Respondent has not violated the Applicant's right to be tried within a reasonable time by an impartial tribunal under Article 7(1)(d) of the Charter;

viii. *Finds* that the Respondent has violated the Applicant's right to defence under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the International Covenant on Civil and Political Rights, for failure to provide the Applicant free legal assistance.

On reparations

Pecuniary reparations

ix. *Dismisses* the Applicant's prayer for material damages.

x. *Grants* the Applicant damages for the moral prejudice he suffered and awards him the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000);

xi. *Orders* the Respondent State to pay the sum awarded under (x) above, free from tax, as fair compensation to be made 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 amount is fully paid.

Non-pecuniary reparations

xii. *Dismisses* the Applicant's prayer for the annulment of his conviction and sentence and his release from prison.

On implementation and reporting

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

On costs

xiv. *Orders* each party to bear its own costs.

Signed:

Blaise TCHIKAYA, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

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