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

ALMAS MOHAMED MUWINDA AND OTHERS

V

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 030/2017

JUDGMENT

24 MARCH 2022

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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The Court composed of: Blaise TCHIKAYA Vice-President; Ben KIOKO, Rafaậ 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:

Almas Mohamed MUWINDA and others

Represented by

Advocate Omari KIWANDO, East Africa Law Society

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

Mr. Gabriel P. MALATA, Solicitor General, Office of the Solicitor General

after deliberation,
renders the following Judgment:

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

I. THE PARTIES

1. Almas Mohamed Muwinda and fifty-eight (58) others (hereinafter referred to as "the Applicants") are Tanzanian nationals and former employees of Urafiki Textile Mills. They bring this action alleging a violation of their right to work as well as their right to non-discrimination.

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 the Protocol on 10 February 2006. It further deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases 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 has held that this withdrawal had no effect on pending cases as well as all new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period of one (1) year after its deposit. [2]

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that through a Government Notice dated 21 March 1997, the Respondent State dissolved Urafiki Textile Mills (hereinafter referred to as "UTM"), a public company, and retrenched all the Applicants. All the Applicants received letters which indicated that the effective date for the

[2] *Andrew Ambrose Cheusi v United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations) § 38.

termination of their employment was 31 March 1997. As part of UTM's dissolution, all its liabilities were vested in the Respondent State's Treasury Registrar and these included those pertaining to employees' terminal, retirement or similar benefits.

4. Due to disagreements about the timing of the payment of the Applicants' terminal benefits, one-hundred and five (105) former employees of UTM, inclusive of the present Applicants, brought a civil suit (Civil Cause No. 394 of 1998) at the High Court in Dar es Salaam seeking the payment of subsistence allowance for the time they had been awaiting payment of their terminal benefits. On 12 July 2002, the High Court found in favour of the Applicants and ordered that they be paid subsistence allowances at the rate of Tanzanian Shillings Six Thousand Four Hundred (TZS 6,400) per day from the date of retrenchment to the date of the High Court's decision.

5. On the Respondent State's appeal to the Court of Appeal, it was held, on 30 May 2006, that the subsistence allowance due to the Applicants was only up to the date when they actually received their terminal benefits and not up to the date of the judgment of the High Court. In its judgment, the Court of Appeal found that the Applicants terminal benefits were paid in three batches that is on 30 April 1997, 31 May 1997 and 31 July 1997. It thus ordered that subsistence allowances be paid to the Applicants for the period between the date of their termination of employment, 31 March 1997 and the date on which their terminal benefits were actually paid.

6. The Applicants filed an application for review of the Court of Appeal's decision, on the ground that it had an error on the face of the record, but this was dismissed on 2 September 2008.

7. Subsequently, the Applicants filed an application for extension of time to file application for review of the Court of Appeal's decision of 2 September 2008 but this was dismissed on 7 August 2017.

B. Alleged violations

8. The Applicants submit that the Respondent State has violated their right to work and to just remuneration under articles 22(1) and 23 of its Constitution, respectively, by not paying in full their subsistence allowances.

9. The Applicants also allege that the Respondent State has violated the same rights under the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR"),[3] Article 23 of the Universal Declaration of Human Rights (hereinafter referred to as "the UDHR") and Articles 15 and 1 of the Charter.

10. The Applicants further allege that the Respondent State has violated their right not to be discriminated against by paying some employees daily subsistence allowances of Tanzanian Shillings Nine Thousand Two Hundred (TZS 9,200) instead of the Tanzanian Shillings Six Thousand Four Hundred (TZS 6,400) that the Applicants' were awarded by the Court of Appeal.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

11. The Application was filed on 25 September 2017 and served on the Respondent State on 23 February 2018. The Respondent State was given thirty (30) days to file its List of Representatives and sixty (60) days to file its Response to the Application.

[3] The Court notes that the ICCPR does not include provisions on the right to work but that the same are contained in the International Covenant on Economic Social and Cultural Rights.

12. On 2 July 2018, the Court, *suo motu*, granted the Respondent State an extension of forty-five (45) days to file its Response.

13. On 17 August 2018, the Applicants filed their Submissions on Reparations, which were transmitted to the Respondent State on 21 August 2018 for the Response thereto to be filed within thirty (30) days of notification.

14. On 27 August 2018, the Respondent State filed a request for extension of time to file its Response. Subsequently, on 18 October 2018, the Court granted the Respondent State an extension of thirty (30) days to file its Response on the merits as well as its Submissions on Reparations. On 6 December 2018, the Court granted the Respondent State another *suo motu* extension of thirty (30) days effective that date.

15. On 16 January 2019, the Court, acting under Rule 63 of the Rules,[4] notified the Respondent State that it would proceed and pass judgment in default both on the merits and reparations should it not hear from the Respondent State within forty-five (45) days of the receipt of the notice.

16. On 21 January 2019, the Respondent State requested an extension of six (6) months to file its Response. On 8 March 2019, the Court granted the Respondent State an extension of sixty (60) days to file both its Response as well as Submissions on Reparations.

17. Pleadings were closed on 28 May 2019 and the parties were duly notified

18. On 26 November 2020, the Respondent State, citing the need to conduct further consultations with other government agencies, filed a further request for extension of time by thirty (30) days to file its Response and Submissions on Reparations.

[4] Rule 55, Rules of Court, 2 June 2010.

19. On 5 March 2021, the Court issued an order re-opening pleadings and giving the Respondent State an extension of thirty (30) days to file their List of Representatives, Response, and Submissions on Reparations.

20. Pleadings were, again, closed on, 4 March 2022 and the Parties were duly notified. The Respondent State, however, had not filed any submissions by this time.

IV. PRAYERS OF THE PARTIES

21. The Applicants pray that "since [they] are victims of the violation of human rights done by the [Respondent] State, then it is prudential and reasonable to order the [R]espondent State to pay subsistence allowances to the Applicants and other forms of reparations as this Honourable Court may deem fit and just to grant for the sake of justice."

22. Specifically, the Applicants pray that the Respondent State pay them their subsistence allowance "to the tune of TSHs.6400/day from 31st March 1997 to the finalisation of this dispute." The Applicants further pray that the Court "makes an order to the Respondent State to pay interest at commercial rate, costs of this Application, or any other order(s) for reparations of the Applicants for the interests of justice thereof as this Honourable Court may deem fit and just to grant."

23. It is also the Applicants' prayer that the "Respondent state should also be ordered to report back to this Honourable Court every six months until they satisfy the orders this court shall make when considering the submission for reparations."

V. ON THE DEFAULT OF THE RESPONDENT STATE

24. The Court recalls that Rule 63(1) of the Rules provides as follows:[5]

> Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other party, or on its own motion, enter a decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

25. As the Court has recognised, Rule 63(1) sets out three conditions that must be satisfied before it can utilise the default judgment procedure and these are:[6] first, the default of one of the parties; second, the request made by the other party or on its own motion; and, third, the notification to the defaulting party of both the application and documents on file.

26. As to the first condition, the Court recalls that this Application was filed on 25 September 2017. It further recalls that from 23 February 2018, the date of service of the Application, to the date of close of pleadings, the Registry notified the Respondent State of all pleadings filed by the Applicant. The record also shows proof of delivery, to the Respondent State, of all notifications. The Court concludes, therefore, that the Respondent State is in default.

27. In relation to the second condition, the Court observes that there is no request by the Applicant for it to adopt the default judgment procedure. Nevertheless, the Court finds that the present case is one where of its own motion it must, in the

[5] Rule 55, Rules of Court 2 June 2010.
[6] *Leon Mugesera v Republic of Rwanda,* ACtHPR, Application No. 012/2017, Judgment of 27 November 2020 (merits and reparations) § 14-17 and *Fidel Mulindahabi v Republic of Rwanda,* ACtHPR, Application No. 004/2017, Judgment of 26 June 2020 (merits and reparations) § 21.

interests of the due administration of justice, have recourse to the default judgment procedure.[7]

28. In connection to the third condition, the Court notes that it is important to recall the various procedural steps taken by the Registry in this case especially in so far as dealing with the Respondent State is concerned. As captured in the "Summary of the Procedure before the Court" hereinabove, it is clear that the Respondent State was aware of the proceedings as demonstrated by the various requests for extension of time that it filed but it still failed to file submissions on both merits and reparations. The Court, therefore, concludes that the Respondent State was duly notified of all the proceedings in relation to this Application.

29. The required conditions having been fulfilled, the Court concludes that it may rule by default.[8]

VI. JURISDICTION

30. In terms of Article 3(1) of the Protocol, 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." Furthermore, according to Rule 49(1) of the Rules, "the Court shall conduct preliminary examination of its jurisdiction…".

31. The Court observes that no objection has been raised in respect of its personal, temporal, territorial, or material jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules,[9] it must satisfy itself that all aspects of its jurisdiction are fulfilled.

[7] *Robert Richard v United Republic of Tanzania*, ACtHPR, Application No. 035/2016, Judgment of 2 December 2021 (merits and reparations) § 17.
[8] *Laurent Munyandilikirwa v Republic of Rwanda*, ACtHPR, Application No. 023/2015, Ruling of 2 December 2021 § 46.
[9] Rule 40, Rules of Court 2 June 2010.

32. Having conducted a preliminary examination of its jurisdiction and noting that nothing on file indicates that it does not have jurisdiction, the Court holds as follows:

i. It has material jurisdiction since the Applicants have alleged a violation of their right to work under Article 15 of the Charter as well as in Article 23 of the UDHR. In this connection, the Court notes that the Respondent State is party to the Charter. In respect of the UDHR, the Court recalls that it has held that while the UDHR is not a human rights instrument subject to ratification by States, it has been recognised that many of its provisions have morphed into customary law.[10]

ii. It has personal jurisdiction since the Application has been filed by a national of the Respondent State, which is a party to the Protocol. Additionally, and as earlier noted, even though the Respondent State deposited an instrument withdrawing its Declaration under Article 34(6), the said withdrawal only took effect twelve (12) months from the date of its deposit which is 22 November 2020.[11] This Application having been filed before the Respondent State's withdrawal was effective is, therefore, not affected by the said withdrawal.

iii. It has temporal jurisdiction since although the violations alleged by the Applicants stem from the dissolution of UTM in 1997, these violations were the subject of litigation that was only concluded with the dismissal, by the Respondent State's Court of Appeal, of the Applicants' application for extension of time to file review on 7 August 2017. The Court finds, therefore, that the violations alleged by the Applicant, though commencing before the Respondent State became party to the Protocol, continued after the Respondent State became a party to the Protocol.[12]

iv. It has territorial jurisdiction since the alleged violations are all said to have occurred within the territory of the Respondent State.

[10] *Anudo Ochieng Anudo v United Republic of Tanzania* (merits) (22 March 2018) 2 AfCLR 248 §76.
[11] *Andrew Ambrose Cheusi v Tanzania* §§ 35-39.
[12] Cf. *Jebra Kambole v United Republic of Tanzania*, ACtHPR, Application No. 018/2018 Judgment of 15 July 2020 (merits and reparations) § 52.

33. In light of the above, the Court holds that it has jurisdiction to examine the Application.

VII. ADMISSIBILITY

34. The Applicant contends that the Application meets all the admissibility requirements in the Charter and as reiterated in the Protocol.

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35. Pursuant to Article 6(2) of the Protocol, "[t]he Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."

36. Pursuant to Rule 50(1) of the Rules,[13] "[t]he 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."

37. 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;
> 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;

[13] Rule 40 Rules of Court, 2 June 2010.

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 seised 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 African Union or the provisions of the Charter.

38. The admissibility conditions set out in Rule 50(2) of the Rules are not in contention between the Parties since the Respondent State did not file anything to counter the Applicants' assertions. Nevertheless, and pursuant to Rule 50(1) of the Rules, the Court is required to determine if the Application fulfils all the requirements set out in Rule 50(2) of the Rules.

39. The Court notes, from the record, that the Applicants are well identified thereby fulfilling the requirements of Rule 50(2)(a) of the Rules.

40. The Court also notes that the claims made by the Applicants seek to protect their rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union is the promotion and protection of human and peoples' rights. The Court, therefore, holds that the Application is compatible with the Constitutive Act of the African Union and the Charter thereby fulfilling the requirements of Rule 50(2)(b) of the Rules.

41. The Court further notes that the language used in the Application is not offensive or insulting thus making it consistent with the requirements of Rule 50(2)(c) of the Rules.

42. The Court observes that the Applicants have submitted documents of various types as evidence in support of their claims thereby establishing that the Application is not based exclusively on news disseminated through the media which makes the Application compliant with Rule 50(2)(d) of the Rules.

43. With regard to Rule 50(2)(e) of the Rules, which relates to exhaustion of local remedies, the Court confirms that all applicants must exhaust domestic remedies unless the same are manifestly unavailable, ineffective and insufficient or the proceedings to secure the local remedies are unduly prolonged.[14] In the present case, the Court notes that the Applicants approached the highest court in the Respondent State, the Court of Appeal, which dismissed their application for extension of time to file an application for review on 7 August 2017. The Court concludes, therefore, that the Applicants exhausted domestic remedies as required by Rule 50(2)(e) of the Rules.

44. With regard to Rule 50(2)(f) of the Rules, the Court observes that this Rule requires applications to be "…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 seised with the matter."

45. As the Court has established, the reasonableness of the period for seizure depends on the particular circumstances of each case and must be determined on a case-by-case basis.[15] In the present case, the Applicants filed their Application on 25 September 2017 which was forty-nine (49) days after the last pronouncement by the Court of Appeal. The Court holds, therefore, that the Application was filed within a reasonable period of time within the meaning of Rule 50(2)(f) of the Rules.

46. The Court observes that the Application does not deal with matters 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. It thus holds that the Application complies with the requirements of Rule 50(2)(g) of the Rules.

[14] *Peter Joseph Chacha v United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398 §§ 142-144.
[15] *Anudo v Tanzania* (merits) § 57.

47. Given the above, the Court holds that the Application meets all the admissibility requirements in Article 56 of the Charter which are reiterated in Rule 50(2) of the Rules and thus declares the Application admissible.

VIII. MERITS

48. The Applicants allege a violation of their right to work, especially the right to remuneration, and their right to non-discrimination.

A. Alleged violation of the right to work

49. The Applicants' argue that after UTM was dissolved and all the employees' contracts were terminated they were not paid their terminal benefits on time. The Applicants claim, therefore, that they are entitled to subsistence allowance for the time when they were waiting for the payment of their terminal benefits. According to the Applicants, the Respondent State's conduct is a violation of Article 15 of the Charter and Article 23(1), (2), (3), of the UDHR.

50. The Respondent State did not file any response to the Applicants' submissions.

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51. The Court notes that Article 15 of the Charter provides that "[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

52. The Court further notes that Article 23 of the UDHR provides as follows:

> 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
> 2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

53. In light of the above, the international law basis for the right to work, including the right to remuneration, is beyond dispute. The Court has also, previously, noted that there is substantive congruence between the provisions of Article 15 of the Charter and Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.[16]

54. As the Court has conceded in its jurisprudence, the right to work is essential for the realisation of other economic, social and cultural rights and it forms an inseparable and inherent part of human dignity.[17] As the Court has further conceded, the right to remuneration is a critical component of the right to work such that unjustly withholding remuneration could amount to a violation of the right.

55. In the present Application, the Court observes that the dispute between the Parties revolves around the payment of subsistence allowance to the Applicants for the time they spent waiting for the payment of their terminal benefits after they were retrenched. According to the Applicants, while their employment was terminated on 31 March 1997, their terminal benefits were paid in four batches, to wit, June 1997, September 1997, December 1997 and March 1998. The Court also observes, however, that the Applicants failed to mention the exact dates when their terminal benefits were paid. In the circumstances, there is nothing to contradict the finding of the Court of Appeal that the Applicants were actually paid in three batches, to wit, 30 April 1997, 31 May 1997 and 31 July 1997.

[16] *Ernest Karata and others v United Republic of Tanzania*, ACtHPR, Application No. 002/2017 Judgment of 30 September 2021 (merits and reparations) § 100. The Respondent State acceded to the International Covenant on Economic, Social and Cultural Rights on 11 June 1976.
[17] *Karata and others v Tanzania* §§101-102.

56. The Court recalls that as a result of disagreements about the payment of subsistence allowance, the Applicants, and their co-workers, commenced action before the Respondent State's High Court in Dar es Salaam (Civil Cause No. 394 of 1998). On 12 July 2002, the High Court entered judgment in favour of the Applicants and ordered the Respondent State to pay the Applicants Tanzanian Shilling Three Hundred and Eighteen Million Nine Hundred Seventy-Seven Thousand and Nine Hundred Thirty-Five (TZS 318 977 935) as subsistence allowance, this being a sum calculated at the rate of Tanzanian Shillings Six Thousand Four Hundred (TZS6 400) per day from the date of termination of employment till the date of judgment of the High Court.

57. However, on the Respondent State's appeal to the Court of Appeal, the High Court's decision was reversed. According to the Court of Appeal "...the award of TZS318 977 935 was neither proved nor substantiated by the pleadings." The Court of Appeal further held that "…the plaintiffs did not establish the claim of subsistence allowance on the balance of probabilities because they adduced no evidence at all to substantiate the same at trial." Overall, the Court of Appeal found that the Applicants were actually paid their terminal benefits in three batches, as earlier pointed out, and that their entitlement to subsistence allowance would, therefore, be commensurate to the salary for the period the Applicants spent waiting for their payments. The Court of Appeal thus ordered that the Applicants be paid salaries for the time that they had spent waiting for their terminal benefits.

58. The Court observes that in their submissions before the Court, the Applicants have not addressed the evidential gaps that were pointed out by the Court of Appeal. For example, the Applicants have not demonstrated that they were owed a duty of repatriation by UTM which would in turn have generated the liability to pay allowances while awaiting the repatriation and payment of terminal benefits. The Court finds, therefore, that the Applicants have failed to prove any grounds necessitating its interference with the findings of the Court of Appeal.

59. Given all the above, the Court thus dismisses the Applicants' claim alleging a violation of their right to work by reason of the non-payment of subsistence allowance.

B. Alleged violation of the right to non-discrimination

60. In their submissions on reparations, the Applicants allege that the Respondent State paid other employees of UTM, whose employment was terminated on the same day as them, subsistence allowance at the rate of Tanzanian Shilling Nine Thousand and Two Hundred (TZS9200) per day. According to the Applicants, this constitutes unacceptable discrimination.

61. The Respondent State did not file any submissions in response to the Applicants' allegations.

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62. The Court recalls that Article 2 of the Charter provides as follows:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

63. The Court reiterates its position that Article 2 of the Charter is imperative for the respect and enjoyment of all other rights and freedoms protected in the Charter. [18] The provision proscribes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or

[18] *African Commission on Human and Peoples' Rights (ACHPR) v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9 § 137.

treatment. In this regard, the Court recalls that it has accepted that discrimination is "a differentiation of persons or situations on the basis of one or several unlawful criterion/criteria." [19]

64. While the Charter is unequivocal in its proscription of discrimination, not all forms of distinction or differentiation can be considered as discriminatory.[20] A distinction or differential treatment becomes discrimination, contrary to Article 2 of the Charter, when it does not have any objective and reasonable justification and in circumstances where it is not necessary and proportional.[21]

65. In respect of the present case, the Court notes that the Applicants have not specified the ground(s), among those outlined in Article 2 of the Charter, on the basis of which they allege to have been discriminated. The Court reiterates that with regard to discrimination, the burden lays with the person who alleges discrimination to establish the basis on which the discrimination can be inferred before the defendant is required to demonstrate whether or not the discriminatory conduct can be justified.[22] While the payment of a different sum of money as subsistence allowance as between similarly situated employees may suggest discrimination, the Court was not provided with information relating to the other employees who were, allegedly, treated differently. The Court thus had no basis on which it could have assessed the payment of Tanzanian Shillings Nine Thousand Two Hundred (TZS9 200) so as to fairly conclude whether this was discriminatory or not. Notably, the Applicants did not provide the Court with a copy of the judgment which they allege ordered the other former UTM employees to be paid subsistence allowance at the rate of Tanzanian Shillings Nine Thousand Two Hundred (TZS9 200).

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[19] *Actions pour la Protection des Droits de l'Homme (APDH) v. Republic of Cote d'Ivoire* (merits) (18 November 2016) 1 AfCLR 668 §§146-147.
[20] *ACHPR v Kenya* §139.
[21] *APDH v Cote d'Ivoire* § 139. See also, *Tanganyika Law Society and others v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34 § 106.
[22] Cf. *Mohamed Abubakari v United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599 § 153-154.

66. Resultantly, the Court finds that the Applicants have simply made a general allegation of discrimination which they have failed to substantiate. [23] In the circumstances, the Court dismisses their allegation of a violation of their right to non-discrimination under Article 2 of the Charter.

IX. REPARATIONS

67. The Applicants prayed the Court to award them reparations.

68. The Respondent State did not make any prayers on reparations

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69. 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 the fair compensation or reparation.

70. The Court having found that the Respondent State has not violated any of the Applicants' rights dismisses the claim for reparations.

X. COSTS

71. The Applicants pray for "costs of this Application" while the Respondent State did not make any submission on costs.

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[23] See, *Alex Thomas v Tanzania* (merits) (20 September 2015) 1 AfCLR 465 § 140; *George Kemboge v Tanzania* (merits) (11 May 2018) 2 AfCLR 369 § 51 and *Kennedy Owino Onyachi and Charles John Njoka v Tanzania* (merits) (28 September 2017) 2 AfCLR 65 § 152.

72. The Court notes that Rule 32(2) of its Rules provides that "unless otherwise decided by the Court, each party shall bear its own costs, if any".[24]

73. In the present Application, the Court orders that each Party shall bear its own costs.

XI. OPERATIVE PART

74. For these reasons:

THE COURT

Unanimously:

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Declares* that the Application is admissible.

On merits

iii. *Finds* that the Respondent State has not violated the Applicants' right to work under Article 15 of the Charter.

iv. *Finds* that the Respondent State has not violated the Applicants' right to non-discrimination under Article 2 of the Charter;

On reparations

v. *Dismisses* the Applicants' prayers for reparations;

[24] Rule 30(2), Rules of Court, 2 June 2010.

On costs

vi. *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 MAKAMULISA Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA;

Modibo SACKO;

and Robert ENO, Registrar.

Done at Arusha, this Twenty-fourth Day of March in the Year Two Thousand and Twenty Two, in English and French, the English version being authoritative.