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

ROMWARD WILLIAM

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 030/2016

JUDGMENT

13 FEBRUARY 2024

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: Modibo SACKO, Vice President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI – 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

Romward WILLIAM

Self-represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General;
iii. Mr Hangi M. CHANG'A, Assistant Director, Constitution, Human Rights and Election petitions; Office of the Solicitor General; and
iv. Elisha E. SUKU, First Secretary and Legal Officer, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation.

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

After deliberation,

renders this Judgment:

I. THE PARTIES

1. Romward William (hereinafter referred to as "the Applicant"), is a Tanzanian national who, at the time of filing the Application, was incarcerated at Butimba Central Prison, Mwanza, having been convicted of murder and sentenced to death. He alleges violation of the right to non-discrimination, right to life and right to dignity during the proceedings before the domestic courts.

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 and new cases filed before the withdrawal came into effect one (1) year after its deposit, in this case, on 22 November 2020.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that, on 9 June 2012, the Applicant assaulted his father-in-law with a *machete* fatally wounding him, after which he fled.

4. On 11 June 2012, the Applicant was arrested and charged with murder before the High Court of Tanzania sitting at Tabora. On 26 June 2015, he was convicted and sentenced to death by hanging. On 29 June 2015, the Applicant filed an appeal to the Court of Appeal, which was dismissed on 26 February 2016.

B. Alleged violations

5. The Applicant alleges the violation of**:**

    i. The right to non-discrimination protected under Article 2 of the Charter in relation to the evaluation of the evidence leading to his conviction;
    ii. The rights to life and dignity protected under Articles 4 and 5 of the Charter in relation to the death sentence.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed on 8 June 2016, served on the Respondent State on 26 July 2016 and transmitted to the other entities under Rule 42(4) of the Rules on 8 September 2016. The Respondent State filed its Response on 15 May 2017 which was notified to the Applicant on 17 May 2017.

7. The Parties duly filed their pleadings on the merits and reparations after several extensions of time.

8. Pleadings were closed on 3 July 2023 and the parties were notified thereof.

IV. PRAYERS OF THE PARTIES

9. The Applicant prays the Court to:

    i. Make an Order quashing both his conviction and sentence;
    ii. Order his release from custody;
    iii. Grant him reparations; and
    iv. Grant any other legal remedy that the Court may deem fit in the circumstances of the Applicant's complaints.

10. On jurisdiction and admissibility, the Respondent State prays the Court to:

    i. Find that the Honourable Court lacks jurisdiction to hear the Application;
    ii. Find that the Application has not met the admissibility requirements provided for in Article 56(6) of the Charter read together with Rule 40(6) of the Rules;[3]
    iii. Declare the Application inadmissible; and
    iv. Order the Applicant to pay costs.

11. On the merits and reparations of the Application, the Respondent State prays the Court to:

    i. Find that it did not violate the Applicant's rights as alleged;
    ii. Dismiss the Applicant's prayers and the Application for lack of merit; and
    iii. Dismiss the Applicant's prayer on reparations.

V. JURISDICTION

12. The Court notes that Article 3 of the Protocol provides as follows:

[3] Rule 50(2)(f) of the Rules of Court, 2020.

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.

13. The Court further notes that pursuant to Rule 49(1) of the Rules it "…shall conduct preliminarily examination of its jurisdiction…in accordance with the Charter, the Protocol and these Rules."

14. In this Application, the Respondent State objects to the Court's material jurisdiction. The Court will, therefore, consider the said objection before examining other aspects of jurisdiction, if necessary.

A. Objection to material jurisdiction

15. The Respondent State submits that the violations alleged by the Applicant on evidentiary issues call upon the Court to act as a court of appeal.

16. Furthermore, citing the case of *Ernest Mtingwi v. Republic of Malawi*, the Respondent State contends that the Court is not vested with jurisdiction to sit as an appellate court and adjudicate on matters that have been finalised by the highest court of the Respondent State.

17. On his part, the Applicant avers that the Court has jurisdiction to determine this Application. He argues that, contrary to the Respondent State's assertion, he is not requesting the Court to sit as an appellate court but rather to remedy the violation of his rights as pleaded.

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18. The Court recalls, as it has consistently held in accordance with Article 3(1) of the Protocol, that it has jurisdiction to consider any Application filed

before it provided that the rights of which a violation is alleged are guaranteed in the Charter, the Protocol or any other human rights instruments ratified by the Respondent State.[4]

19. In the instant case, the Applicant alleges the violation of the right to non-discrimination and the right to life which are protected under the Charter, to which the Respondent State is a party. The Court thus finds that, in considering these allegations, it will be discharging its mandate to interpret and apply the Charter and other human rights instruments ratified by the Respondent State.

20. As regards the contention that the Court would be exercising appellate jurisdiction by examining certain claims which were already determined by the Respondent State's domestic courts, the Court reiterates its position that it does not exercise appellate jurisdiction with respect to the decisions of domestic courts.[5] However, even though, it is not an appellate court vis-à-vis domestic courts, it retains the power to assess the propriety of domestic proceedings against standards set out in international human rights instruments ratified by the State concerned.[6]

21. In view of the foregoing, the Court dismisses the Respondent State's objection and holds that it has material jurisdiction to hear the Application.

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[4] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Jibu Amir alias Mussa and Said Ally Mangaya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 18; *Abdallah Sospeter Mabomba v. United Republic of Tanzania,* ACtHPR*,* Application No. 017/2017, Judgment of 22 September 2022, § 21.

[5] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14; *Kennedy Ivan v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 26; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 35

[6] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Werema Wangoko Werema and Waisiri Wangoko Werema v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29 and *Thomas v. Tanzania* (merits) *supra*, § 130.

B. Other aspects of jurisdiction

22. The Court notes that there is no contention regarding its personal, temporal or territorial jurisdiction. Nevertheless, it must satisfy itself that these aspects have been met.

23. The Court notes, with respect to its personal jurisdiction that, as earlier stated in paragraph 2 of this Judgment, the Respondent State is a party to the Protocol and on 29 March 2010, it deposited with the African Union Commission, the Declaration made under Article 34(6) of the Protocol. Subsequently, on 21 November 2019, it deposited an instrument withdrawing its Declaration.

24. The Court recalls its jurisprudence that, the withdrawal of a Declaration does not apply retroactively and only takes effect one (1) year after the date of deposit of the notice of such withdrawal, in this case, on 22 November 2020.[7] This Application having been filed before the Respondent State's withdrawal came into effect, is thus not affected by it. Consequently, the Court finds that it has personal jurisdiction.

25. With regard to temporal jurisdiction, the Court notes that the alleged violations happened between 2012 and 2016. Therefore, the alleged violations occurred after the Respondent State had ratified the Charter, on 21 October 1986, the Protocol on 10 February 2006 and had deposited the Declaration under Article 34(6) of the Protocol on 29 March 2010. Accordingly, the Court finds that it has temporal jurisdiction.

26. The Court also notes that it has territorial jurisdiction insofar as the alleged violations occurred in the Respondent State's territory.

27. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

[7] *Cheusi v. Tanzania* (merits and reparations) *supra*, §§ 37-39.

VI. ADMISSIBILITY

28. Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter."

29. Pursuant to Rule 50(1) of the Rules, "[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."

30. 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;
> 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.

31. In this Application, the Respondent State raises an objection to the admissibility of the Application based on the Applicant's failure to exhaust local remedies. The Court will, therefore, consider the said objection before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

32. The Respondent State contends, without substantiating, that the Application does not meet the requirement of Article 56(5) of the Charter as local remedies were not exhausted.

33. The Applicant avers that he exhausted all local remedies and, therefore, complied with the requirement under Article 56(5) of the Charter.

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34. The Court notes that, pursuant to Article 56(5) of the Charter, the provisions of which are restated in Rule 50(2)(e) of the Rules, any application filed before it has to fulfil the requirement of exhaustion of local remedies. The rule of exhaustion of local remedies aims at providing states the opportunity to resolve cases of alleged human rights violations within their jurisdiction before an international human rights body is called upon to determine the state's responsibility for the same.[8]

35. In the instant case, the Court notes from the record that the Applicant was convicted of murder and sentenced to death by the High Court of Tanzania sitting at Tabora on 26 June 2015. He then appealed to the Court of Appeal of Tanzania, the highest judicial organ of the Respondent State which, on 26 February 2016, upheld the judgment of the High Court. In the circumstances, the Court finds that the Applicant exhausted all the available domestic remedies.

[8] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR 9, §§ 93-94.

36. For this reason, the Court dismisses the objection relating to the non-exhaustion of local remedies.

B. Other conditions of admissibility

37. The Court notes that there is no contention regarding the Application's compliance with the conditions set out in Rule 50(2)(a), (b), (c), (d), (f) and (g) of the Rules. Nevertheless, in accordance with Rule 50(1), it must satisfy itself that these conditions have been met.

38. From the record, the Court notes that, the Applicant has been identified by name in fulfilment of Rule 50(2)(a) of the Rules.

39. The Court also notes that the Applicant's claims 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. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. Consequently, the court considers that the Application is compatible with the Constitutive Act. It therefore holds that the requirement of Rule 50(2)(b) of the Rules is met.

40. The Court further finds that the language used in the Application is not disparaging or insulting to the Respondent State and its institutions or to the African Union, in fulfilment of Rule 50(2)(c) of the Rules.

41. The Court also observes that the Application is not based exclusively on news disseminated through mass media as it is founded on record of the proceedings of the domestic courts in fulfilment with Rule 50(2)(d) of the Rules.

42. Regarding, the requirement that an application should be filed within a reasonable time after exhaustion of local remedies, the Court notes that the Application was filed on 8 June 2016, that is, three (3) months and eleven

(11) days after the Court of Appeal rendered its decision on 26 February 2016. The Court considers this period of three (3) months and eleven (11) days within which it was seized after exhaustion of local remedies to be manifestly reasonable. Consequently, the Court holds that the Application was filed within a reasonable time in accordance with Rule 50(2)(f) of the Rules.

43. Furthermore, the Court finds that the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union in accordance with Rule 50(2)(g) of the Rules.

44. The Court, therefore, finds that all the admissibility conditions have been fulfilled and that the Application inadmissible.

VII. MERITS

45. The Applicant alleges the violation of his rights by the Respondent State as follows:

    i. The right to not be discriminated against, protected under Article 2 of the Charter owing to the discriminatory assessment of the evidence leading to his conviction;
    ii. The right to life protected under Article 4 of the Charter owing to the death sentence imposed on him; and
    iii. The right to dignity protected by Article 5 of the Charter due to the imposition of the death sentence.

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

46. The Applicant alleges that the testimony of the prosecution witnesses during his trial did not prove that he intended to kill the victim. He avers that

there were contradictions in the testimonies of the witnesses which the High Court and Court of Appeal should have noted and which should have resulted in his acquittal.

47. The Applicant also argues that the evidence adduced in his defence at the High Court was rejected without reason. He further argues that the exhibit tendered by the prosecution based on the testimony of Prosecution Witness 3, which was relied upon to convict him, should have been found inadmissible as it had not been marked as evidence**.** Consequently, the Applicant argues that the national courts discriminated against him.

48. The Respondent State contends that the Court of Appeal confirmed that the Applicant killed the victim with intent when he assaulted him with a *machete* targeting the most vital part of the victim's body, the head.

49. The Respondent State argues that the Applicant was provided with free legal assistance during his trial and was, therefore, not discriminated against. Furthermore, it contends that both the prosecution and defence witnesses were given the opportunity testify and the High Court together with the assessors considered all the evidence.

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50. The Court notes that although the Applicant relies on Article 2 of the Charter to support his alleged violation, his claim bears on his right to have one's cause heard, and more aptly falls under Article 7(1) of the Charter.

51. Article 7(1) of the Charter provides: "[e]very individual shall have the right to have his cause heard…".

52. This Court notes in line with its established jurisprudence "... that a fair trial requires that the imposition of a sentence in a criminal offence, and in particular a heavy prison sentence, should be based on strong and credible

evidence. That is the purport of the right to the presumption of innocence also enshrined in Article 7 of the Charter."[9]

53. In the instant case, the Court notes that the issue for determination is whether the consideration of evidence before the domestic courts was in accordance with the requirements of a fair trial. In this regard, the Court notes from the record that the Applicant was represented by counsel, Mr Nathan Alex, and was given the same opportunity to present his case as the prosecution. At the conclusion of the defence case, the judge found that the prosecution had proven its case through the testimonies of four (4) eyewitnesses who knew the Applicant. Furthermore, the learned judge was also unconvinced by the Applicant's *alibi* that he was on the farm on that fateful day when he "struck a moving object with a *machete* in self-defence".

54. In light of the foregoing, the Court finds that the manner in which the domestic proceedings were conducted does not disclose any manifest error or miscarriage of justice.

55. Accordingly, the Court dismisses the Applicant's allegation and holds that the Respondent State did not violate his right to have one's cause heard, protected under Article 7(1) of the Charter.

B. Alleged violation of the right to life

56. The Applicant alleges that his death sentence is a violation of the right to life.

57. The Respondent State contends that even though the death penalty has been subject to many national debates, it continues to be legal in Tanzania. Citing the case of *Dominic Mbushuu v. The Republic*, the Respondent State

[9] *Mohamed Abubakari v. Tanzania* (merits), § 174; *Diocles Williams v. United Republic of Tanzania* (merits and reparations) (21 September 2018) 2 AfCLR 426, § 72. *Majid Goa v. United Republic of Tanzania* (merits and reparations) (2019) 3 AfCLR 498, § 72.

also argues that the death penalty is only imposed after due process has been followed.

58. According to the Respondent State, the death penalty is "lawful, procedural and constitutional." The Respondent State also contends it has had a moratorium on the death penalty for the last (20) twenty years.

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59. The Court notes that the Applicant alleges the violation of his right to life under Article 4 of the Charter by virtue of his death sentence.

60. The Court observes that Article 4 of the Charter provides that "[h]uman beings are inviolable. Every human being shall be entitled to respect for [their] life and the integrity of [their] person. No one may be arbitrarily deprived of this right."

61. On the arbitrary deprivation of the right to life as protected under Article 4 of the Charter, the Court recalls its established jurisprudence as held in *Ally Rajabu and Others v. United Republic of Tanzania*.[10] In the said judgment and subsequent judgments, the Court held that the mandatory imposition of the death sentence would be arbitrary and therefore a violation of the right to life if i) it is not provided by law; ii) it is not meted out by a competent court; or iii) it does not result from proceedings that follow due process.[11] The Court notes that the Applicant challenges the sentence that was meted out on him.

62. As to whether the death penalty is provided by law, the Court notes that Section 197 of the Respondent State's Penal Code (1981) provides that the sole penalty for a person convicted of murder is the death sentence, and

[10] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539.
[11] *Rajabu and Others v. Tanzania*, *ibid,* §§ 99-100.

therefore, the condition of the death sentence being provided for by law is met.

63. On whether the penalty was meted out by a competent court, the Court notes that the High Court is empowered to hear cases where an accused has been charged with murder.[12] In the present case, the Applicant was charged with murder at the High Court and was convicted to death by the same Court, which means that the sentence was meted out by a competent court.

64. Finally, as to whether the death sentence resulted from due process, the Court notes that the national courts sentenced the Applicant to death for the crime of murder following his conviction. Furthermore, the Court did not find fault with the procedure leading to the conviction of the Applicant. However, the Court finds that the mandatory nature of the death penalty, as provided for under Section 197 of the Respondent State's Penal Code, leaves the national courts with no choice but to sentence a convict to death, resulting in arbitrary deprivation of life. By taking away the discretionary power of a judge to impose a sentence on the basis of proportionality and the personal situation of a convicted person, the mandatory death sentence does not comply with the requirements of due process.

65. In the circumstances, the Court holds that the mandatory death sentence, as prescribed by section 197 of the Respondent State's Penal Code, does not pass the third criterion for assessing arbitrariness of the sentence. It thus holds, in line with its jurisprudence, that the mandatory death penalty constitutes an arbitrary deprivation of the right to life under Article 4 of the Charter**.**

[12] Article 108(1) of the Constitution of Tanzania – has original jurisdiction in civil and criminal matters.

C. Alleged violation of the right to dignity

66. The Applicant alleges that his sentence to death constitutes cruel, inhuman and degrading treatment in violation of the Charter.

67. The Respondent State argued that the death penalty is "lawful, procedural and constitutional" and that it was imposed in accordance with the law.

***

68. The Court notes that Article 5 of the Charter provides as follows:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of [their] legal status. All forms of exploitation and degradation of [human beings], particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

69. The Court observes that the concept of human dignity is of profound significance in the realm of individual rights. It serves as an essential foundation upon which the edifice of human rights is constructed. The right to dignity captures the very essence of the inherent worth and value that resides within every individual, irrespective of their circumstances, background, or choices. At its core, it embodies and upholds the principle of respect for the intrinsic humanity of each person and forms the bedrock of what it means to be truly human. It is in this sense that Article 5 absolutely prohibits *all* forms of treatment that undermines the inherent dignity of an individual.[13]

70. The Court recalls its judgment that the time spent awaiting execution can distress persons sentenced to death particularly when the duration is

[13] *Makungu Misalaba v. United Republic of Tanzania,* ACtHPR, Application No. 033/2016, Judgment of 7 November 2023, § 165.

long.[14] The Court emphasises that, detention on death row is inherently inhuman and encroaches upon human dignity.[15] This Court reiterates that the distress associated with detention awaiting execution of the death sentence stems from the natural fear of death and the uncertainty that a condemned prisoner has to live with.[16] In such a case, States such as the Respondent are encouraged to determine appropriate sentences that remove the constant possibility of the enforcement of the death penalty for persons originally sentenced to death.

71. The Court notes, in the present case that the situation is exacerbated by the fact that the Applicant was sentenced to death without consideration of mitigating circumstances including an alternative sentence, as the domestic court's discretion was removed by law, in contravention of the Charter. Given these circumstances, the Applicant invariably suffered psychological and emotional distress which constitutes a violation of his right to dignity**.**

72. Consequently, the Court finds that the Applicant's right to dignity protected under Article 5 of the Charter was violated.

VIII. REPARATIONS

73. The Applicant prays the Court to grant him reparations for the violations he suffered, including quashing his conviction and sentence and ordering his release.

74. The Respondent State prays the Court to dismiss the Applicant's prayer for reparations.

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[14] *Ghati Mwita v. United Republic of Tanzania,* ACtHPR, Application No. 012/2019, Judgment of 1 December 2022, § 87.
[15] *Ibid.*
[16] *Misalaba v. Tanzania* (judgment), *supra,* § 16.

75. 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.

76. The Court recalls its earlier judgments and restates its position that, "to examine and assess Applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim."[17]

77. The Court also restates that reparations "… must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."[18]

78. The measures that a State may take to remedy a violation of human rights include restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-repetition of the violations taking into account the circumstances of each case.[19]

79. The Court reiterates that the general rule with regard to material prejudice is that there must be a causal link between the established violation and the prejudice suffered by the Applicant and the onus is on the Applicant to provide evidence to justify his prayers.[20] With regard to moral prejudice, the Court exercises judicial discretion in equity.

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[17] *Abubakari v. Tanzania* (merits), *supra*, § 242 (ix) and *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19.

[18] *Mohamed Abubakari v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 334, § 21; *Alex Thomas v. United Republic of Tanzania*, (reparations) (4 July 2019) 3 AfCLR 287, § 12; *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania*, (reparations) (4 July 2019) 3 AfCLR 308, § 16.

[19] *Umuhoza v. Rwanda* (reparations), *supra*, § 20.

[20] *Christopher Mtikila v. Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15.

80. The Court notes its finding that the Respondent State violated the Applicant's right to life under Article 4 and the right to dignity protected under Article 5 of the Charter with respect to the mandatory imposition of the death penalty. The Court, consequently, finds that the Respondent State's responsibility has been established. The prayers for reparations will, therefore, be examined against these findings.

A. Pecuniary reparations

81. The Applicant prays the Court for reparations and any other remedy that it may deem fit.

82. The Respondent State prays the Court to dismiss the Applicant's prayers for reparations.

***

83. The Court notes that, pecuniary reparations include material and moral prejudice. The Applicant did not make any specific request in relation to pecuniary reparations. The Court notes that, reparations for material prejudice requires proof of the loss suffered, which the Applicant did not provide and therefore, he is not entitled to reparation for material prejudice.

84. However, reparations for moral prejudice is that which results from the suffering, anguish and changes in the living conditions of the victim and his family.[21] As the Court has established in this judgment that the Applicant's rights were violated by the imposition of the mandatory death sentence, resulting in psychological and emotional distress, he is entitled to damages for moral prejudice.

85. The Court has held that the assessment of quantum in cases of moral prejudice must be done in fairness and taking into account the

[21] *Mtikila v. Tanzania* (reparations), *supra,* § 34; *Cheusi v. Tanzania* (judgment), *supra,* § 150 and *Viking and Another v. Tanzania* (reparations), *supra,* § 38.

circumstances of the case.[22] The practice of the Court, in such instances, is to award a lump sum for moral prejudice.[23]

86. In view of the above, the Court grants the Applicant moral damages in the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000).

B. Non-pecuniary reparations

87. The Applicant prays the Court to quash his conviction and order his release from prison.

88. The Respondent State submits that the Court has no jurisdiction to order the release of the Applicant. It therefore prays the Court to reject this prayer.

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i. On the prayer to quash the conviction

89. Regarding the prayer to quash his conviction, the Court notes that it did not determine whether the conviction of the Applicant was warranted or not. Furthermore, the Court was satisfied that the manner in which the Respondent State determined the case did not occasion any error or miscarriage of justice to the Applicant requiring its intervention.[24] The Court therefore dismisses this prayer.

ii. On the prayer for release

90. Regarding the prayer for release, the Court has held that this measure can be ordered only in specific and compelling circumstances. This would be

[22] *Juma v. Tanzania* (judgment), *supra,* § 144; *Viking and Another v. Tanzania* (reparations), *supra,* § 41 and *Umuhoza v. Rwanda* (reparations), *supra,* § 59.
[23] *Zongo and Others v. Burkina Faso* (reparations), *supra*, §§ 61-62 and *Guehi v. Tanzania* (merits and reparations), *supra,* § 177.
[24] *Stephen John Rutakikirwa v. United Republic of Tanzania,* ACtHPR, Application No. 013/2016, Judgment of 24 March 2022, § 88.

the case "if an Applicant sufficiently demonstrates or the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and his continued imprisonment would occasion a miscarriage of justice."[25]

91. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant's right to dignity through the imposition of the mandatory death sentence. 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 conviction amounts to 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.[26]

92. In view of the foregoing, the Court dismisses the Applicant's prayer for release.

iii. Guarantees of non-repetition

93. The Court, having found that the imposition of the mandatory death penalty provided for by its Penal Code contravenes the Charter, orders the Respondent State to take all necessary constitutional and legislative measures, within six (6) months of the notification of the present Judgment, to ensure that this provision of its Penal Code is amended and aligned with the provisions of the Charter so as to eliminate the violations identified herein. Furthermore, the Court orders the Respondent State, within one (1) year of the notification of the present Judgment, to vacate the sentence, remove the Applicant from death-row and rehear his case on sentencing through a procedure that allows judicial discretion.

[25] *Evarist v. Tanzania* (merits), *ibid*, § 82.
[26] *Mussa and Mangaya v. Tanzania* (merits and reparations), *supra*, § 97; *Elisamehe v. Tanzania* (judgment)*, supra*, § 112; and *Evarist v. Tanzania* (merits), *ibid*, § 82.

94. The Court also notes from the record that the Applicant was sentenced to death by hanging. In light of the finding on the mandatory imposition of the death penalty, whereas the Applicant does not expressly pray for a remedy in this respect, the Court notes that the remedy ordered in its previous judgments on the same issue applies to the present Applicant.[27] The Court therefore orders the Respondent State to remove, within six (6) months of the notification of the present Judgment, execution of the mandatory death sentence by hanging from its laws.

IX. COSTS

95. The Respondent State prays the Court to order the Applicant to bear costs by. The Applicant did not make any prayers with regard to costs.

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96. 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."

97. The Court sees no reason to depart from the above provision and decides that each Party shall bear its own costs.

[27] *Rajabu and Others v. Tanzania*, *supra*, §§ 119-120; *Amini Juma v. United Republic of Tanzania,* ACtHPR, Application no. 024/2016, Judgment of 30 September 2021 (merits and reparations), §§ 135-136; *Gozbert Henerico v. United Republic of Tanzania,* ACtHPR, Application no. 056/2016, Judgment of 10 January 2022 (merits and reparations), §§ 169-170.

X. OPERATIVE PART

98. For these reasons,

THE COURT,

On jurisdiction

Unanimously,

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

On admissibility

iii. *Dismisses* the objection to the admissibility of the Application;
iv. *Declares* the Application admissible.

On merits

Unanimously,

v. *Holds* that the Respondent State did not violate the Applicant's right to a fair trial protected under Article 7(1) of the Charter with regards to the assessment of evidence;

By a majority of eight (8) for and two (2) against,

vi. *Holds* that the Respondent State violated the Applicant's rights to life and dignity protected under Articles 4 and 5 of the Charter respectively, in relation to the mandatory imposition of the death penalty.

Unanimously,

On reparations

On pecuniary reparations

vii. *Grants* the Applicant's prayer for reparation for moral prejudice suffered and awards him the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000);

viii. *Orders* the Respondent State to pay the sum ordered in (vii) 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.

On non-pecuniary reparations

ix. *Dismisses* the Applicant's prayer for the Court to quash his conviction and order his release from prison;

x. *Orders* the Respondent State to take all necessary constitutional and legislative measures, to remove, the mandatory imposition of the death penalty from its Penal Code, within six (6) months of the notification of this Judgment.

xi. *Orders* the Respondent State to vacate the death sentence, remove the Applicant from death-row and rehear his case on sentencing through a procedure that allows judicial discretion, within one (1) year of the notification of this Judgment;

xii. *Orders* the Respondent State to take all necessary measures within six (6) months of the notification of this Judgment, to remove "hanging" from its laws as the method of execution of the death sentence.

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 orders under paragraphs (x), (xi) and (xii) of this operative part and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

xiv. *Orders* each that each Party shall bear its own costs.

Signed:

Modibo SACKO, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol, and Rules 70(3) of the Rules, the Declarations of Justice Blaise TCHIKAYA and Justice Dumisa NTSEBEZA are appended to this Judgment.

Done at Arusha, this Thirteenth Day of February in the Year Two Thousand and Twenty-Four in English and French, the English text being authoritative.