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AFRICAN COURT DELIVERS A LANDMARK DECISION ON STATELESSNESS

By Carmel Rickard

IN what is being hailed as a “monumental” decision for the continent, the African Court on Human and Peoples’ Rights has ruled that Tanzania arbitrarily deprived a man of his Tanzanian nationality. The judgment, likely to affect many “stateless” people in Africa, stipulates that a decision to strip someone of nationality may only be taken after a fair judicial process, and that arbitrary deprivation is in breach of the Universal Declaration of Human Rights. Tanzania has been given 45 days to restore Anudo Anudo’s nationality, fix the gaps in its legislation and report back to the court on what has been done to comply with its order.

WHEN Anudo Anudo went to his local police station to sort out all the papers he needed to get married, he could not have guessed that he was about to have his nationality taken away, be made stateless – and then become the unlikely hero of a landmark decision by the African Court on Human and Peoples' Rights.

He took that first fatal step in 2012, when he approached the authorities in his native Tanzania, in preparation for his wedding. But the police refused to return his passport, saying there were “suspicions” about his citizenship. The confiscation of his passport ultimately led to an official declaration that he was not a Tanzanian, and then to his deportation to Kenya. But the authorities in Kenya did not want him either, and he was soon expelled back to Tanzania. As he had no valid documents that would allow him entry into his own country, he lived in no-man’s land near the border for four years.

During the period until he landed up in no-man’s land he was abused and beaten by the authorities, and told to pay a bribe. Effectively stateless for four years, squeezed into a piece of territory between Kenya and Tanzania, he experienced very difficult conditions with neither social nor health services.

In May 2015 he applied for help to the African court which notified officials in Tanzania that the case had been registered. The court decided that it would provide Anudo with legal help and an NGO in Tanzania, Asylum Access Tanzania, agreed to represent him.

Anudo asked for the court to order that the decision to expel him from his own country be declared null and void. He wanted his prohibited immigrant status cancelled and his Tanzanian nationality reinstated. He also asked for protection from any victimization arising from his litigation and, crucially for any others in a similar position, he asked that Tanzania be ordered to reform its immigration laws so that decisions that might deprive someone of fundamental rights could only be made following a fair trial.

Tanzania urged the court to find it had no jurisdiction to hear the matter. Failing this it should declare that Tanzania had not violated any of Anudo’s rights and that his allegations of corruption were false.

[Read the full judgment here >>>](#) [2]

Finding it had jurisdiction, the court then considered whether withdrawal of his nationality “conformed with international human rights standards”. The power to deprive someone of their nationality had to be “exercised in accordance with international standards”. Generally, international law does not allow the “loss of nationality” and in a crucial finding, the court held that the burden of proof lay with Tanzania for whether Anudo’s claim of nationality was valid.

The state disputed whether the man Anudo claimed was his father, was in fact so. By refusing to have a DNA test carried out, the state “missed an opportunity to obtain proof of its claims”. Its decision to deprive Anudo of his Tanzanian nationality was thus unjustified, leading the court to conclude it was both “arbitrary” and contrary to the Universal Declaration of Human Rights.

What about his right to be heard by a judge? According to Anudo, by not bringing him before a court, the Tanzanian authorities condemned him without giving him the opportunity to be heard and thus condoned “arbitrary arrest and expulsion”.

The court said that the African Commission on Human and Peoples’ Rights has held that where deprivation of nationality was involved, “the state has the obligation to offer the individual the opportunity to challenge the decision” and that the state should conduct a proper judicial inquiry.

The court also found that the Tanzanian Citizenship Act had gaps in it because it did not allow citizens by birth to “exercise judicial remedy where their nationality is challenged as required by international law”. Tanzania was obliged to fill these gaps.

In the opinion of the court, there had been a number of “major violations” of Anudo’s rights and this would be a factor in considering any reparations that might be due to him.

The court unanimously declared that Tanzania arbitrarily deprived Anudo of his nationality in violation of the Universal Declaration of Human Rights, violated his right not to be expelled arbitrarily and violated his right to be heard by a court. It further ordered Tanzania to fix its legislation “to provide individuals with judicial remedies in the event of dispute over their citizenship” and ordered that state to restore his rights by allowing him to return and ensuring his protection. Tanzania is also to submit a report to the court within 45 days on compliance with these orders.

Finally, the court reserved its decision on reparations and on costs, giving the parties time to file written submissions on these two questions.

Though this is the first time the African court has given a decision on a state’s duties relating to withdrawal of nationality, the tactic of expulsion and removal to another state is not unknown.

The Kenyan case of Salim Awadh Salim and nine others raised a similar problem: the Kenyan government arrested and detained the group between January 2007 and October 2008, holding them under conditions later accepted by the Kenyan courts to have constituted torture, cruel, inhuman and degrading treatment in Kenya. They were then subjected to “illegal, extra-judicial and unconstitutional removal” to Ethiopia, followed by torture in Ethiopia and Somalia.

It later turned out that Kenya had expelled the group on the assumption that they were not Kenyans. When their relatives later complained, however, the authorities for the first time established the true identities of the group. The Kenyan courts later said the government’s behaviour “demonstrates an attitude that is totally out of touch with the duty of the state

towards its citizens”.

This group was awarded a significant amount in damages, and it seems likely that the African court will be similarly disposed to consider a damages award in the case of Anudo.

According to the Oxford Human Rights Hub, one reason for the importance of the Anudo case is that the judges found the right to nationality exists under customary international law. Even though the African Charter did not include the right to nationality, Tanzania was bound by the Universal Declaration of Human Rights as well as its provisions that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of nationality”.

Recognition of this principle is particularly important at a time when many African states have not ratified the UN convention on the Status of Stateless Persons.

According to the [Oxford Human Rights Hub assessment of the judgment](#) [3], written by Namibian legal expert Ndjodi Ndeunyema, currently a DPhil student at Oxford, the Anudo decision is “monumental” in Africa, given the significant number of stateless persons within the continent. “This case can go a long way in avoiding regression by preventing those with precarious nationality status from becoming stateless through arbitrary state conduct.”

[Read the full judgment here >>>](#) [2]

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