AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPL COUR AFRICAINE DES DROITS DE L'HOM		

THE MATTER OF

JOHN MWITA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 044/2016

JUDGMENT

13 FEBRUARY 2024

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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 8(2) of the Rules of Court[1], Justice Imani D. ABOUD, President of the Court and a national of Tanzania did not hear the Application.

In the Matter of:

John MWITA

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. Ms Nkasori SARAKIKYA, Director of Human Rights, Ministry of Constitution and Legal Affairs;
iv. Mr Hangi M. CHANG'A, Assistant Director, Constitution, Human Rights and Election petitions; Office of the Solicitor General; and

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

v. Ms Blandina KASAGAMA, Ministry of Foreign Affairs and East African Cooperation.

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. John Mwita (hereinafter referred to as "the Tanzania. At the time of filing the Application, he was imprisoned at Butimba Central Prison, Mwanza, having been convicted of armed robbery and sentenced to thirty (30) years in prison. The Applicant alleges a violation of his right to a fair trial in relation to proceedings before the national courts.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), Charter on Human and Peoples' Rights (hereinafter ref Charter") on 21 October 1986 and to the deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol by virtue of 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 under Article 34(6) of the Protocol. The Court has held that the withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect, being a period of one (1) year after the deposit, that is, on 22 November 2020.[2]

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the record that the Applicant, along with three (3) other individuals who are not parties to this Application, was apprehended and accused of robbing one Machude Nfungo, on 12 March 2007 at about 20:45 hours in the Mara Region within the Respondent State. Subsequently, all the four suspects were charged at the District Court of Musoma, with the offence of armed robbery contrary to Section 287A of Respondent State's Penal Code. The District Court convicted the Applicant and two (2) co-accused and sentenced them to thirty (30) years in prison but acquitted the third co-accused on 9 May 2008.

4. The Applicant and the two (2) co-accused appealed against their conviction and sentence to the High Court at Mwanza. The appeal was dismissed through a judgment delivered on 27 September 2010. Dissatisfied with this, they further appealed to the Court of Appeal.

5. On 12 March 2013, the Court of Appeal upheld the conviction and the sentence of the Applicant on the basis of the doctrine of recent possession but acquitted his co-accused and ordered their release.

B. Alleged violations

6. The Applicant claims that the Respondent State has violated his right to equal treatment and protection of the law, right to bail, right to legal representation and right to be heard, contrary to Articles 2, 3, 6 and 7 of the Charter, respectively.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 22 January 2016 and was served on the Respondent State on 25 July 2016.

8. Following several extensions of time, on 24 May 2017, the Respondent State filed its Response, which was transmitted to the Applicant on 29 May 2017.

9. The Applicant filed his Reply to the Respondent State's Response on 14 July 2017, which was transmitted to the Respondent State on 3 October 2017.

10. On 2 July 2018, the Applicant was requested to file his submissions on reparations but despite several reminders, he failed to do so.

11. On 13 June 2019, the Court decided to close pleadings and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to:

    i. Set aside both his conviction and sentence;
    ii. Order the Respondent State to immediately release him from prison;
    iii. Order for reparations pursuant to Article 27(1) of the Protocol; and
    iv. Provide him any other reliefs or orders as the Court deems fit.

13. On its part, the Respondent State prays the Court to grant the following orders with respect to jurisdiction and admissibility:

    i. That, the Honourable Court is not vested with jurisdiction to adjudicate on the Application;

ii. That, the Application has not met the admissibility requirements provided in Rule 50(2)(e) of the Rules[3] of Court and it is therefore inadmissible and be duly dismissed;
iii. That, the Application has not met the admissibility requirements provided in Rule 50(2)(f) of the Rules[4] of Court and it is therefore inadmissible and be duly dismissed; and
iv. That, the Application is inadmissible and should be dismissed with costs.

14. On the merits of the Application, the Respondent State also prays the Court to order that:

i. [it]did not violate the Applicant's human rights provided under Article 2 of the Charter;
ii. [it] did not violate the Applicant's human rights provided under Article 3(2) and (3) of the Charter;
iii. [it] did not violate the Applicant's human rights provided under Article 7(c) of the Charter;
iv. The Application be dismissed for lack of merit;
v. The Applicant's prayers not be granted;
vi. The Applicant not be awarded reparations; and
vii. Costs be borne by the Applicant.

V. JURISDICTION

15. 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, the […] 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.

[3] Rule 50(2)(e) of the Rules of Court adopted in September 2020.
[4] Rule 50(2)(f), *ibid*.

16. In accordance with Rule 49(1) of the preliminary examination of its jurisdiction ... with the Charter, the Protocol and the Rules."

17. On the basis of the above-cited provisions, the Court must, in every application, preliminarily, conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

18. In the present Application, the Court notes that the Respondent State has raised an objection to its material jurisdiction. The Court will thus, first, consider the objection to its material jurisdiction before assessing other aspects of its jurisdiction, if necessary.

A. Objection to material jurisdiction

19. The Respondent State contends that the Court does not have jurisdiction to hear this Application as it raises issues of fact and law which have been determined with finality by its Court of Appeal. The Respondent State avers that, through this Application, the Court is being called upon to act as an appellate court.

20. Relying on Rule 29 of the Rules[5] and the Court's Ruling in the case of *Ernest Francis Mtingwi v. Republic of Malawi*, the Respondent State also contends that this Court lacks jurisdiction to quash the conviction, set aside sentences and order the release of the Applicant from prison as the decision to convict and sentence the Applicant was affirmed by its highest court.

21. Furthermore, the Respondent State asserts that the Applicant is also asking the Court to sit as a Court of first instance and adjudicate on matters, which were never raised before the municipal courts. In this regard, the Respondent State submits that the Applicant's allegations relating to him being denied bail, that he was condemned without being given the

[5] Rule 26 of the Rules of Court (2010).

opportunity to be heard and that he was not given defence counsel are being raised for the first time before this Court.

22. The Applicant argues that the Court has jurisdiction in accordance with Article 3(1) of the Protocol and Rule 26(2) of the Rules, which give the Court a mandate to decide on his Application. He asserts that the Respondent State's objection to the Court's jurisdiction is a misjudgment or a misinterpretation of both the Court's authority and the principles enshrined in the Charter. According to the Applicant, his Application relates to his unfair conviction and sentence to thirty (30) years imprisonment as a result of the illegality in Respondent State's judicial hierarchy. Thus, his decision to bring the matter to this Court is to challenge this illegality and the Court would not be sitting as an appellate court if it adjudicates on his matter.

23. Regarding the Respondent State's second objection that some of his allegations are being raised for the first time before this Court, the Applicant contends that such objection relates to the admissibility requirement of exhaustion of local remedies and it is illogical for the Respondent State to raise it to challenge the jurisdiction of the Court.

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24. The Court recalls that by virtue of 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 instrument ratified by the Respondent State.

25. Regarding the Respondent State's assertion that the Court's examination of the evidentiary foundation of the Applicant's conviction would constitute an exercise of appellate jurisdiction, the Court reiterates its established position that it does not exercise appellate jurisdiction with respect to the decisions of domestic courts.[6]

[6] *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*

26. However, despite not assuming the role of an appellate court, in relation to domestic decisions, the Court retains the authority to evaluate the conformity of domestic proceedings with the standards established in international human rights instruments ratified by the concerned States.[7] This distinctive power does not transform the Court into an appellate body; rather, it underscores its responsibility to uphold and apply the principles enshrined in international human rights treaties without encroaching upon the realm of domestic appellate review.[8]

27. Concerning the Respondent State's objection that some of the Applicant's allegations are being raised for the first time, the Court concurs with the Applicant that this pertains to the issue of admissibility of the Application, specifically, the requirement of exhaustion of local remedies. The Court therefore reserves its determination on this objection and will address it later while considering admissibility.

28. In view of the above, the Court dismisses the Respondent State's objections to its material jurisdiction and holds that it has material jurisdiction to hear this Application.

B. Other aspects of jurisdiction

29. The Court notes that the Parties do not contest the other aspects of its jurisdiction and nothing on record indicates that it lacks jurisdiction. Nonetheless, in line with Rule 49(1) of the Rules, the Court must satisfy itself that all aspects of its jurisdiction are met.

30. In relation to its personal jurisdiction, as highlighted in paragraph 2 earlier, the Respondent State officially lodged the instrument of withdrawal of the

Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania (merits) (23 March 2018) 2 AfCLR 287, § 35.

[7] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 33; *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29 and *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 130.

[8] *Ibid*.

Declaration on 21 November 2019. The Court has held that such withdrawal does not apply retroactively. Therefore, it has no bearing on matters pending before the Court prior to the filing of the instrument withdrawing the Declaration or new cases filed before the withdrawal took effect, being a period of one (1) year after the deposit of the notice of withdrawal, that is, on 22 November 2020. The instant Application having been filed on 22 January 2016, that is, before the Respondent State withdrew its Declaration, it is not affected by such withdrawal and thus, the Court has personal jurisdiction.

31. Concerning its temporal jurisdiction, the Court notes that the alleged violations are based on the District Court's judgment of 9 May 2008 and the High Court's and the Court of Appeal's judgment of 27 September 2010 and 12 March 2013, respectively. The Court notes that all the three (3) decisions of the domestic courts were delivered after the Respondent State had ratified the Charter and the Protocol. Furthermore, the Applicant remains incarcerated, serving a thirty (30) year sentence that he claims resulted from an unfair trial.[9] In essence, the alleged violations are continuing, thus conferring the Court with temporal jurisdiction to scrutinize such claims.[10]

32. As regards its territorial jurisdiction, the Court holds that it has territorial jurisdiction, as the alleged violations occurred in the territory of the Respondent State.

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

[9] *Tanganyika Law Society and Legal and Human Rights Centre v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34, § 84; *African Commission on Human and Peoples' Ri Kenya* (merits) (26 May 2017) 2 AfCLR 9, § 65; *Ivan v. Tanzania* (merits and reparations), *supra,* § 29 (ii).

[10] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, § 68; and *Igola Iguna v. United Republic of Tanzania,* ACtHPR, Application No. 020/2017, Judgment of 1 December 2022, § 18.

VI. ADMISSIBILITY

34. In accordance with Article 6(2) of the Protocol, "the Court shall admissibility of cases taking into account the provisions of Article 56 of the Charter."

35. 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 Protoc

36. Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all the following conditions:
>
> a. 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 African Union or the provisions of the Charter.

37. The Respondent State raises two objections to the admissibility of the Application relating to the requirements of exhaustion of local remedies and

filing an application within a reasonable time. The Court will consider these objections before examining other conditions of admissibility, if necessary.

A. Objection based on non-exhaustion of local remedies

38. The Respondent State contends that the Applicant has not exhausted local remedies and thus his Application should be declared inadmissible. The Respondent State reiterates that the allegations of violations of human rights made by the Applicant were not raised before the domestic courts and it is the first time that they are being raised in the Application. According to the Respondent State, this contradicts the well-established principle of exhaustion of local remedies.

39. The Respondent State asserts that the Applicant had legal remedies available to him within its jurisdiction which he could have pursued prior to filing their Application before this Court. With regard to his allegations of not being granted bail and not being heard, the Respondent State avers that the Applicant could have commenced a constitutional petition for enforcement of his basic rights under the Basic Rights and Duties Enforcement Act at the High Court of Tanzania. Similarly, with regard to his allegation that he had no free legal assistance, the Respondent State submits that the Applicant could have applied for it in accordance with its Legal Aid (Criminal Proceedings) Act. It contends that the Applicant failed to do so prior to seizing the Court, thus, the Court should dismiss his Application for lack of exhaustion of local remedies.

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40. The Applicant disputes the Respondent State's submissions and asserts that his Application meets the requirement of exhaustion of local remedies. He contends that his matter went through the different Courts of the Respondent State including the High Court and the Court of Appeal. The Applicant asserts that the domestic courts should reasonably have observed all applicable laws in dealing with matters even if parties failed to

refer to them. He emphasises that the role of the courts is to ensure that justice is done by applying all pertinent rules and regulations and not to do justice merely on the basis of those rules cited by the parties.

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41. The Court notes that pursuant to Rule 50(2)(e) of the Rules, any application filed before it must fulfil the requirement of exhaustion of local remedies unless local remedies are unavailable, ineffective, or the domestic procedure to pursue them is unduly prolonged.[11] This requirement seeks to ensure that, as the primary duty bearers, States have the opportunity to address human rights violations occurring within their jurisdiction before an international body is called upon to intervene. It reinforces the subsidiary role of international human rights bodies in the protection of human and peoples' rights. In its established jurisprudence, the Court has also consistently affirmed that in order for this requirement of admissibility to be met, the remedies that should be exhausted must be ordinary judicial remedies.[12]

42. In the instant case, the Court notes from the record the Applicant makes four allegations of violations of human rights; namely, right to equal treatment and equal protection of the law, the right to bail, the right to be heard, and right to legal representation, contrary to Articles 2, 3, 6 and 7 of the Charter, respectively.

43. The Court further notes that the Applicant's allegation of denial of his right to bail is indeed being raised for the first time. It is evident that this particular claim was neither presented during the trial proceedings nor was it included as one of the grounds of appeal before the High Court and the Court of Appeal.

[11] *Thomas v. Tanzania* (merits), *supra*, § 64; *Kennedy Owino Onyachi and Charles Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, § 56; *Werema and Werema v. Tanzania* (merits), *supra,* § 40.
[12] *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 95.

44. However, Section 148(5) of the Respondent St provides that: "a Police Officer in char whom an accused person is brought or appears, shall not admit that person to bail if: this person is accused of (i) murder, treason, *armed robbery* or defilement" .

45. The crime of which the instant Applicant was convicted, namely, armed robbery, is therefore a non-bailable offence in the Respondent State. Accordingly, there would have been no prospect for success for the Applicant even if he had raised the denial of his right to bail before the domestic courts. In other words, there was no available and effective remedy in the Respondent State with regard to this allegation and in this context, he cannot be required to have exhausted a non-existent local remedy.[13]

46. The Court further observes that the allegation of violation of the right to equal treatment and equal protection of the law is related to the Applicant's allegation of violation of his right to be heard. Furthermore, the Applicant's allegation of violation of his right to free legal representation is made in the context of his trial and appeals in the domestic courts, which is also tied to the Applicant's right to be heard.

47. In line with its established case-law, the Court is of the view that these alleged violations occurred in the course of the domestic judicial proceedings that led to the Applicant's conviction and sentence to thirty (30) years' imprisonment. The allegations form part of the and "bundl guarantees" relating to the right to a Applicant's appeals.[14]

48. The domestic judicial authorities, including the Court of Appeal, which is the Respondent State's highest court, had ample opportunity to address the allegations even without the Applicant having raised them explicitly. It would

[13] *Konaté v Burkina Faso* (*merits*) (2014) 1 AfCLR 310, § 108
[14] *Thomas v. Tanzania* (merits), *supra*, § 60; *Onyachi and Njoka v. Tanzania* (merits), *supra,* § 68.

therefore be unreasonable to require the Applicant to file a new application before the domestic courts to seek redress for this claim.[15]

49. Concerning the Respondent State's allegation that the Applicant should have considered filing a constitutional petition procedure at the High Court, the Court has consistently held that this remedy, in the Tanzanian judicial system, is an extraordinary remedy that Applicant is not required to exhaust prior to bringing their matters to this Court.[16]

50. In view of the foregoing, the Court finds that the Applicant has exhausted local remedies as required under Article 56(5) of the Charter and Rule 50(2)(e) of the Rules.

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

51. The Respondent State asserts that the instant Application was not filed within a reasonable time from the date local remedies were exhausted. In this regard, the Respondent State asserts that it deposited the Declaration allowing the Applicant to file his case on 9 March 2010 and the Court of Appeal delivered its judgment on 7 March 2013. However, the Applicant seized the Court three (3) years later, on 25 July 2016, which according to the Respondent State was an unreasonable delay.

52. The Respondent State further concedes that the Rules and the Charter do not quantify what constitutes reasonable period of time. However, it maintains that a six (6) months limit is the period established by international human rights jurisprudence as reasonable. In support of its contention, the Respondent State relies on the decision of the African Commission on Human and Peoples' Rights in *Majuru v. Zimbabwe*.

[15] *Ibid*, §§ 60-65.
[16] *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, § 72; *Onyachi and Njoka v. Tanzania* (merits), *supra*, § 56.

53. Recalling that the admissibility requirements in Rule 50(2) of the Rules are cumulative, the Respondent State submits that the Court should declare the Application inadmissible.

54. The Applicant maintains that his Application was filed within a reasonable time and that the Respondent State's objection in this regard should be dismissed. He states that even if the Respondent State subscribed to the individual complaint mechanism on 9 March 2010, he became aware of the existence of the Court only between late 2015 and early 2016. The Applicant attributes his unawareness of the existence of the Court to the fault of the Respondent State, which he asserts deprived him of any knowledge of the Court.

55. The Applicant further asserts that the six (6) month period, which the Respondent State has referenced as indicative of international human rights jurisprudence on this matter, should not be automatically applied to his unique circumstances. He contends that given his status as an incarcerated individual without legal representation, the evaluation of the reasonableness of the time he took to bring his case before the Court should be considered within the context of his situation to ensure a fair and equitable determination.

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56. The Court notes that, with regard to filing the Application within a reasonable time, neither Article 56(6) of the Protocol nor Rule 50(2)(f) of the Rules set a precise time-limit. Having acknowledge this, the Court has previously observed that reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[17]

57. In its jurisprudence, the Court has previously taken into consideration circumstances such as imprisonment, being lay without the benefit of legal

[17] *Norbert Zongo and Others v. Burkina Faso* (merits) (2014) 1 AfCLR 219, § 92. See also *Thomas v. Tanzania* (merits), *supra*, § 73.

assistance,[18] indigence, illiteracy, lack of awareness of the existence of the Court,[19] and the use of extra-ordinary remedies.[20] Nevertheless, the Court has emphasised that these circumstances must be proven.

58. In the instant case, the Court notes from the records that the Court of Appeal determined the Applicant's appeal on 12 March 2013 and the Applicant filed his Application on 25 July 2016, that is, after a lapse of three (3) years, four (4) months, and thirteen (13) days.

59. The question for the Court's determination, therefore, is whether this delay could be considered as reasonable within the terms of Article 56(6) of the Charter as read together with Rule 50(2)(f) of the Rules.

60. The Applicant contends that the delay in filing his case is attributed to his incarceration without access to legal assistance, coupled with his lack of awareness regarding the existence of the Court. He asserts that he only became aware of the Court's existence around late 2015. The Court notes that the Respondent State does not dispute the Applicant's contention in this regard.

61. The Court also notes that the Applicant is self-represented before this Court and as a convicted prisoner, is secluded from the general population and cut off from possible information flow, and restricted in his movements.

62. In view of the foregoing, the Court finds the filing of the Application within a period of three (3) years, four (4) months, and thirteen (13) days is reasonable and thus, his Application is deemed to have been filed within a reasonable time in accordance with Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

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[18] *Thomas v. Tanzania*, *ibid*, § 73; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 54; *Amir Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.
[19] *Ramadhani v. Tanzania*, *ibid*, § 50; *Jonas v. Tanzania* (merits), *ibid*, § 54.
[20] *Guehi v. Tanzania* (merits and reparations), *supra*, § 56; *Werema and Werema v. Tanzania* (merits), *supra*, § 49; *Alfred Agbes Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, §§ 83-86.

C. Other admissibility requirements

63. The Court notes that the requirements in sub-rules 50(2)(a), (b), (c), (d), (e) and (g) of the Rules, are not in contention between the Parties. Nevertheless, it must still ascertain that these requirements have been fulfilled.

64. From the records, the Court notes that the Applicant is clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.

65. The Court also notes that the Applicant's claims seek to protect his rights guaranteed under the Charter. Further, Article 3(h) of the Constitutive Act of the African Union (AU), lists the promotion and protection of human and peoples' rights among the objectives of the AU. Therefore, the Court holds that the Application is compatible with the Constitutive Act of the AU and the Charter, and thus, fulfils the requirement of Rule 50(2)(b) of the Rules.

66. The Court further notes that the language used in the Application is neither disparaging nor insulting with regard to the Respondent State, its institutions or the African Union, in compliance with the Rule 50(2)(c) of the Rules.

67. Besides, the Application is also not based exclusively on news disseminated through mass media, rather, it is based on judicial decisions from the domestic courts of the Respondent State. Thus, the Court holds that the Application complies with Rule 50(2)(d) of the Rules.

68. Concerning the admissibility requirement specified in Article 56(7) of the Charter, the Court notes 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. The Court, thus, finds that the Application complies with Rule 50(2)(g) of the Rules.

69. The Court, therefore, finds that all the admissibility requirements have been met and that the Application is admissible.

VII. MERITS

70. The Court notes that the Applicant alleges that the Respondent State has violated his right to be heard, right to legal representation, the right to bail, and right to equal treatment and equal protection of the law, in contravention of Articles 2, 3, 6 and 7 of the Charter.

71. The Court notes that the Applicant's contentions of violation of the right to be heard and the right to legal assistance fall within the scope of the right to a fair trial enshrined under Article 7 of the Charter. On the other hand, the Applicant's claim of violations of Articles 2 and 3 relate to his allegation of being unfairly treated contrary to his right to equality and equal protection of the law. Furthermore, the Applicant's allegation o pertain to Article 6 of the Charter, which guarantees the right to liberty. Accordingly, the Court will now address these allegations individually in a sequential manner.

A. Allegation of violation of the right to a fair trial

i. Alleged violation of the right to be heard

72. The Applicant alleges that the Respondent State violated his right to be heard during the trial that led to his conviction and sentence and subsequently, in the course of his appeals. He claims that his conviction was based on insufficient evidence obtained from the testimony of Prosecution Witnesses (PW I and PW 6) and Prosecution Exhibit (Exhibit 2).

73. The Applicant asserts that the domestic courts simply looked at the demeanour of these witnesses to ascertain their credibility. He also contests

that Exhibit 2 was relied upon by the appellate courts to sustain his conviction and sentence by wrongly invoking the doctrine of recent possession. According to the Applicant, this has violated his right to be heard under Article 7 of the Charter.

*

74. The Respondent State disputes the Applicant's submissions and contends that his allegations should be put to strict proof. The Respondent State argues that the Applicant's trial and his appeals were conducted in accordance with its laws and in line with international human rights standards.

75. In this regard, it asserts that the Applicant was arrested and charged accordingly and he was present during the preliminary hearing as well as the trial during which he was allowed to enter his defence, call witnesses, cross examine prosecution witnesses and consult and challenge the validity of Exhibits. The Respondent State asserts that the Applicant was subsequently able to exercise his right to appeal both at the High Court and the Court of Appeal. It submits that his right to be heard was respected throughout the trial and appellate stages.

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76. The Court notes that Article 7(1) of the Charter provides that

> 1. Every individual shall have the right to have his cause heard. This comprises:
>   a. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
>   b. The right to be presumed innocent until proved guilty by a competent court or tribunal;

c. The right to defence, including the right to be defended by counsel of his choice;
d. The right to be tried within a reasonable time by an impartial court or tribunal.

77. The Court notes that the right to be heard bestows upon individuals a range of entitlements. These include the right to initiate legal proceedings before a competent judicial or quasi-judicial tribunal, the right to voice opinions on issues and procedures impacting one's rights, and the right to appeal to higher courts or authorities in instances where one is dissatisfied with decisions of the lower courts or authorities.[21] The right to be heard as enshrined in Article 7 of the Charter specifically stipulates that an applicant is entitled to take part in all proceedings, and to adduce his or her arguments and evidence in accordance with the adversarial principle.[22]

78. The Court also recalls its established position that "a fair trial the imposition of a sentence in a criminal offence, and in particular, a heavy prison sentence, should be based[23] The on str nature or form of admissible evidence for purposes of criminal conviction may vary across the different legal traditions but it must always have sufficient weight to establish the guilt of the accused.

79. The Court further recalls that "it is nc principle, it is up to national courts to decide on the probative value of a particular piece of[24] Accordingly, it "cannot assume the th the domestic courts and investigate the details and particulars of evidence used in domestic proceedings to establish the criminal culpability of individual[25] The Court "only intervenes when there is a manifest error in

[21] *Werema and Werema v. Tanzania* (merits) *supra*, § 69, *Kambole v. Tanzania* (judgment) (2020) 4 AfCLR 460, § 96; *Ibrahim Ben Mohamed Ben Ibrahim Belguith v. Republic of Tunisia,* Application No. 017/2021, Judgment of 28 September 2022 (merits and reparations), § 96.
[22] *Anaclet Paulo v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 446, § 81.
[23] *Abubakari v. Tanzania* (merits), *supra,* § 174.
[24] *Ibid*.
[25] *Ibid*.

the assessment of the national courts that would result in miscarriage of justice.

80. In this particular case, the record indicates that the Prosecution summoned five (5) witnesses. However, the District Court chose to base its decision solely on the accounts provided by three (3) Prosecution Witnesses (PW 1, PW 2, and PW 5), opting to disregard the testimonies of PW 3 and PW 4 due to concerns about their reliability.

81. Furthermore, with specific reference to the Applicant, the trial Court invoked the doctrine of recent possession. This was prompted by the fact that the Applicant was said to have been found in possession of the stolen items just two hours after the incident occurred. Significantly, before the trial court, the Applicant failed to provide any explanation regarding the circumstances under which he came into possession of these items.

82. The High Court differed with the District Court in its reasoning concerning the accuracy of the testimonies provided by PW 1, PW 2 and PW 5, deeming them insufficient. With respect to PW 2 specifically, it expunged his confession for it was obtained illegally under the threat of force. However, the High Court still relied on the doctrine of recent possession and sustained the Applicant's conviction.

83. The Court of Appeal also conducted a comprehensive review of the trial and High Court records. It concluded that the testimonies of the third and fourth prosecution witnesses (PW 3 and PW 4), which had been excluded from consideration by the lower courts, were "[26]The Court found that the issue was merely procedural, as the testimonies were provided without adhering to the applicable rules governing taking of oath.

84. However, the Court of Appeal still found that the testimonies of PW 3 and PW 4 as well as PW 1 with respect to the identity of the accused, were

[26] Judgment of Court of Appeal, p. 6.

inconsistent and their visual identific
dock identification'.[27] Consequently, the Court of Appeal dismissed their visual identification as unsatisfactory evidence. In spite of this, the Court of Appeal upheld the conviction of the Applicant, basing its decision on the doctrine of recent possession. The Court emphasised that the stolen items were in alignment with the description provided by the victim (PW 1), and noteworthy, the Applicant did not raise any objections when the items were submitted as exhibits.

85. The Court observes that despite some variations in their reasoning and evaluation of the prosecution witnesses' testimonies, all three domestic courts arrived at the same conclusion regarding the Applicant's guilt.

86. The Court notes that, taken as a whole, the manner in which the domestic courts evaluated the evidence leading to the Applicant's conviction does not reveal any manifest errors or miscarriage of justice to the Applicant. Acknowledging the margin of appreciation that domestic courts have in assessing evidence, in the circumstances of this case, the Court finds it appropriate to accord deference to their determinations. [28]

87. In light of the aforementioned considerations, the Court finds that the Respondent State has not violated the Applicant's right to be heard guaranteed by Article 7(1) of the Charter.

ii. Alleged violation of the right to legal representation

88. The Applicant contends that the Respondent State violated his right to legal assistance contrary to Article 7(1)(c) of the Charter. He claims that despite having been charged with a serious offence, he was not afforded free legal assistance throughout his trial and appellate proceedings.

[27] *Ibid*, p. 7.
[28] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 218, § 73; *Werema and Werema v. Tanzania* (merits), *supra*, § 63.

89. The Respondent State concedes that the hearing of the case against the Applicant was conducted without the aid of a lawyer. Nonetheless, it argues that the Applicant was always in a position to adequately defend himself and chose to do so. The Respondent State maintains that the opportunity for legal assistance in the form of a defence counsel was available to the Applicant through Section 3 of its Legal Aid Criminal Procedure Act yet he failed to make such a request.

90. In this connection, the Respondent State asserts that in its legal system, the right to free legal representation is only mandatory and should be provided without the need to request for it with respect to homicide, murder and manslaughter cases. However, for other offences, legal assistance is subject to a request by an accused person or appellant, who also has to prove that he is indigent and unable to afford legal services. As such, it prays the Court that it should apply the principle of margin of appreciation, taking into consideration its limited financial capacity, and dismiss the Applicant's allegation.

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91. According to Article 7(1)(c) of the Charter, the right to have one's cause heard includes "the right to be defended by counsel of [their] choice."

92. The Court has previously 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),[29] and determined that the right to defence includes the right to be provided with free legal assistance.[30]

93. In the instant case, the Court observes, from the record, that the Applicant was not represented by Counsel during the domestic proceedings. He faced a serious charge of armed robbery carrying a minimum thirty (30) years

[29] The Respondent State became a State Party to the ICCPR on 11 June 1976.
[30] *Thomas v*. *Tanzania* (merits), *supra*, § 114; *Isiaga v. Tanzania* (merits), *supra*, § 72; *Onyachi and Njoka v. Tanzania* (merits), *supra,* § 104.

prison sentence. Yet, he was not provided with legal assistance and he had to defend himself throughout the proceedings. The Court notes that the Respondent State admits that the Applicant was not represented by a lawyer but insists that he should have made a request if he needed one. The Respondent State also does not dispute that the Applicant was indigent.

94. The Court has established, in its jurisprudence, 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 they have requested for it.[31]

95. The Court has also held that, the duty 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] States should, therefore, automatically grant legal assistance as long as the interest of justice require, regardless of the fact that an applicant has not requested for it.

96. In the instant case, the Court holds that given his circumstances, the interests of justice required that the Applicant be provided with legal assistance throughout his trial and appeals. An offence carrying a minimum of thirty (30) years imprisonment should have prompted the judicial authorities to assign a lawyer to the Applicant. Considering the fundamental importance of the Applicant's rights at stake, this obligation does not depend on the Respondent State's resource capacity or even on an express request from the Applicant.

97. In view of this, the Court dismisses the Respondent State's claim that free legal representation should first be requested by an applicant and that its provision depends on availability of resources.

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[31] *Thomas v*. *Tanzania* (merits), *ibid*, § 123; *Isiaga v. Tanzania*, *ibid*, § 78; *Kennedy Owino Onyachi and Njoka v. Tanzania*, *ibid*, §§ 104 and 106.

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

98. The Court, therefore, finds that the Respondent State has violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

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

99. The Applicant reiterates that the national courts, while examining his case, did not consider all the relevant facts and convicted him on the basis of the improbable doctrine of recent possession and insufficient evidence. This, according to the Applicant, resulted in violation of his right to equality before the law and equal protection of the law contrary to Articles 2 and 3 of the Charter.

100. The Respondent State did not directly respond to this part of the Applicant's allegations but it maintains, in general terms, that the Application should be dismissed for being unsubstantiated and for lack of merit.

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101. The Court notes that Article 2 of the Charter enshrines the right to non-discrimination 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, birth or any status.

102. Article 3 of the Charter also guarantees the right to equality and equal protection of the law in the following terms:

> 1. Every individual shall be equal before the law.
> 2. Every individual shall be entitled to equal protection of the law

103. The Court observes that the right to protection against discrimination, as stipulated in Article 2 of the Charter, is fundamentally related to the right to equality before the law and equal protection of the law enshrined under Article 3 of the Charter.[33]

104. However, the ambit of the right to non-discrimination extends beyond the confines of equal treatment under or before the law. It also has an additional facet that enables individuals to effectively enjoy the rights outlined in the Charter, without facing differentiation based on attributes like race, colour, gender, religion, political ideology, national origin, social heritage, or any other status.[34]

105. The Court has previously held that the right to equal protection of the law specifically requires that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[35] In a similar case against the Respondent State, the Court noted that this right is recognised and guaranteed in the Constitution of the Respondent State. The relevant provisions (Articles 12 and 13 of the Constitution) enshrine the right in similar form and content as the Charter, including by prohibiting discrimination.

106. The Court has observed that the right to equality before the law also requires that "all persons shall be equal before[36]

107. In the instant case, as elucidated in preceding paragraphs 80-84, the domestic courts thoroughly reviewed all available evidence and considered the arguments presented in the Applicant's appeal, ultimately concluding

[33] *African Commission on Human* (merits), *supra*, § 138 *Peoples' Rights v. K*
[34] *Ibid*.
[35] Article 26 of the International Covenant on Civil and Political Rights (ICCPR) (1966), see also *Isiaga v. Tanzania* (merits), *supra*, § 84. The Respondent became a State Party to the ICCPR on 11 June 1976.
[36] *Isiaga v. Tanzania*, *ibid*.

that they held no substance. Regarding the Applicant, the courts specifically highlighted that his unexplained possession of the stolen items stood as irrefutable evidence and proved his culpability beyond any reasonable doubt. It was upon this foundation that he was found guilty and subsequently sentenced to a thirty (30) year imprisonment.

108. In this regard, the Court finds nothing on record that demonstrates that the Applicant was treated unfairly or subjected to discriminatory treatment in the course of the domestic proceedings.

109. The Court, therefore, dismisses the Applicant's allegation that the Respondent State violated Article 2 and Article 3(1) and (2) of the Charter.

C. Alleged Violation of the Right to Bail

110. The Applicant asserts that the Respondent State violated his fundamental right to liberty by detaining him from the time of his arrest, that is, 12 March 2007, until his conviction on 9 May 2008, without granting him bail.

111. On its part, the Respondent State reiterates its contention that the Applicant never requested bail during the domestic proceedings and he is raising the issue before this Court for the first time.

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112. The Court observes that the Charter does not explicitly guarantee the right to bail in any of its provisions. However, the International Covenant on Civil and Political Rights (ICCPR), in Article 9(3), provides that:

> Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other

stage of the judicial proceedings, and, should occasion arise, for execution of the judgments.[37]

113. This provision affirms that the detention of individuals accused of having committed crimes should be an exceptional measure. Those awaiting trial ought to be granted bail unless specific circumstances necessitate detention, such as the need to uphold the integrity of the trial and prevent the risk of absconding.

114. The Court emphasises that the decision on whether to grant bail to an accused demands an individualised assessment, taking into account the unique facts of each case and the specific circumstances of the Applicant. In such assessment, while considering the nature of the charges against an accused is relevant, it should not be the sole determining factor for the denial or granting of bail. In essence, the enjoyment or denial of the right to bail by an accused should not be a legally predetermined outcome solely based on the nature of the crime.

115. In its caselaw, the Court has acknowledged that the right to bail is intertwined with other rights, including the right to liberty, the right to equality and non-discrimination, right to be heard, the presumption of innocence and the right to have adequate time and facility to prepare one's defence.[38] Violating the right to bail is, therefore, not an isolated transgression; rather, it constitutes a simultaneous infringement upon several other fundamental rights.

116. In relation to Section 148(5) of the Criminal Procedure Act (CPA) of the Respondent State, the Court specifically determined that although there may be circumstances justifying the denial of bail, the Act's complete exclusion of the competence of domestic courts and the elimination of judicial discretion in assessing bail for specific categories of offenses run

[37] Article 9 (3), the International Covenant on Civil and Political Rights (1966)
[38] *Legal & Human Rights Centre and Tanzania Human Rights Defenders Coalition v. United Republic of Tanzania*, ACtHPR, Application No. 039/2020, Judgment of 13 June 2023 (merits and reparations).

counter to multiple provisions within the Charter, which are designed to safeguard accused persons' liberty, fai
law. [39]

117. In the instant case, the Court notes the Respondent State's submissio
the Applicant does not raise the violation of his right to bail, a point he does not contest. Nevertheless, the Court underscores that Section 148(5) of the CPA explicitly designates armed robbery, the offence for which the Applicant was convicted, as a non-bailable offence. As a result, even if the Applicant had raised the issue during domestic proceedings, the Respondent State would have been precluded by law from considering bail for armed robbery. The Respondent State has not furnished adequate justification for such a categorical exclusion, creating a situation where detention becomes the norm rather than the exception.

118. In view of the foregoing, the Court therefore finds that the Respondent State's denial of the possibility of bail to the Applicant violated his right to liberty protected under Article 6 of the Charter as read jointly with Article 9(3) of the ICCPR.

VIII. REPARATIONS

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

120. The Respondent State prays that the Court should dismiss the request for reparations, contending that the Applicant was convicted and sentenced in accordance with the law. The Respondent State asserts that in order for the Court to order reparations, it must first find violation of human rights and establish that the said violation caused harm. In the present matter, the

[39] Ibid, §§ 151-153.

Respondent State argues that the Applicant, apart from requesting an order for his acquittal and compensation, he has not proved violation of his rights and any loss or damage suffered as a result of such violation. Accordingly, the Respondent State submits that the Court should not award the reparations requested by the Applicant.

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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 has consistently held that for reparations to be granted, the Respondent State should first be internationally responsible for 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.[40]

123. The Court reiterates that the onus is on the Applicant to provide evidence to justify his prayers, particularly for material damages.[41] With regard to moral damages, the Court has held that the requirement of proof is not strict,[42] since it is presumed that there is prejudice caused when violations are established.[43]

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[40] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Guehi v. Tanzania* (merits and reparations), *supra,* § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 55; and *Elisamehe v. Tanzania* (merits and reparations), § 97.
[41] *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; See also *Reverend Christopher R. Mtikila v. United 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(d); and *Elisamehe v. Tanzania* (merits and reparations), *supra*, § 97.
[42] *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55. See also *Elisamehe v. Tanzania* (merits and reparations), *ibid*, § 97.
[43] *Ibid*.

124. The Court also restates that the measures that a State must take to remedy a violation of human rights includes 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.[44]

125. In the instant case, the Court has established that the Respondent State has violated the Applicant's right to bail contrary to Article 6 of the Charter and legal representation under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR by failing to provide him with free legal assistance during their trial and appeals in the domestic courts.

A. Pecuniary reparations

i. Material prejudice

126. The Court recalls that for it to grant reparations for material prejudice, there must be a causal link between the violation established by the Court and the prejudice caused and there should be a specification of the nature of the prejudice and proof thereof.[45]

127. In the instant case, the Applicant simply prayed the Court to grant him reparations in accordance with Article 27 of the Protocol, without specifying the nature of the pecuniary reparations sought. He has not indicated the nature of the material prejudice he suffered and how this is linked with the violation of his right to legal assistance under Article 7(1)(c) of the Charter.

128. In the circumstances, the Court therefore dismisses the prayer for reparations for material prejudice.

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[44] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20. See also *Elisamehe v. Tanzania, ibid*, § 96.
[45] *Kijiji Isiaga v. United Republic of Tanzania*, ACtHPR, Application n° 011/2015, Judgment of 25 June 2021 (reparations), § 20.

ii. Moral prejudice

129. The Applicant does not expressly request the Court to grant reparations for moral prejudice. The Applicant simply prays the Court to grant him reparations.

130. The Respondent State maintains that the Applicant's conviction and subsequent sentencing were a direct result of his own actions, thereby asserting that he should not be entitled to any form of reparations.

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131. In line with established case-law that moral prejudice is presumed in cases of human rights violations, the Court notes that the quantum of damages in this respect is assessed based on equity, taking into account the circumstances of the case.[46]

132. The Court recalls its finding that the Respondent State has violated the Applicant's right to free legal assistance by failing to avail him the services of counsel in the course of his trials in the domestic courts and his right to liberty by denying him the possibility of obtaining bail awaiting trial.[47]

133. The Court notes that the violation of the right to legal representation that it established caused moral prejudice to the Applicant in the circumstances of this case, and exercising its discretion, the Court therefore awards the Applicant the sum of Tanzanian Shillings three hundred thousand (TZS 300, 000) as adequate reparation of the moral prejudice he sustained as a result of the established violations.

[46] *Zongo and Others v. Burkina Faso* (reparations), *supra,* § 55; *Umuhoza v. Rwanda* (reparations), *supra,* § 59; *Christopher Jonas v. United Republic of Tanzania* (reparations) (25 September 2020) 4 AfCLR 545, § 23.
[47] See *Paulo v. Tanzania* (merits), *supra,* § 107; *Evarist v. Tanzania* (merits), *supra*, § 85.

B. Non-pecuniary reparations

i. Restoration of liberty

134. The Applicant prays the Court to quash his conviction and sentence and restore his liberty. He also prays the Court to set aside the sentence imposed on him and order his release from prison.

135. The Respondent State maintains that the Applicant's prayer for release should be dismissed as he is serving a lawful sentence imposed on him in accordance with its laws. It also reiterates that that ordering the release of the Applicant is not within the mandate of the Court.

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136. Regarding the Applicant's prayer to set aside his conviction, the Court recalls that it is not an appellate court and thus, in principle, it does not quash the conviction decision of domestic courts.

137. Regarding the Applicant's request for an order for release, the Court recalls that it can only make such order in compelling circumstances. The Court notes that its finding of a violation in the present Application only pertains to lack of legal representation during trial and the right to liberty and does not, therefore, affect the conviction of the Applicant. 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 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.[48] The prayer for release

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

is, therefore, not warranted, and the Court consequently dismisses the same.[49]

ii. Guarantees of non-repetition

138. The Applicant does not make specific prayers requesting guarantee of non-repetition.

139. However, the Court notes that the established violations in the instant Application, notably, the Applicant's arrest from the Respondent State, specifically, Section 148(5) of the Criminal Procedure Act (CPA). The Court recalls that this law violates Article 6 of the Charter as it removes the discretion of judicial officers to grant or deny bail for persons accused of committing certain crimes, including armed robbery. In so far as this law remains in force, persons in a similar position to the instant Applicant therefore remain at the risk of being denied bail if they are charged with the armed robbery or other offences listed in Section 148 (5) of CPA.

140. In order to guarantee the non-repetition of the established violations, the Court accordingly orders the Respondent State to amend its domestic law in such a manner that judicial officers are provided with the discretion to grant or deny bail to an accusing having taken into consideration the specific circumstances of each case.

iii. Publication

141. None of the parties made any submissions in respect of the publication of this Judgment.

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142. The Court considers, however, that for reasons now firmly established in its practice, and in the peculiar circumstances of this case, publication of this

[49] *Stephen John Rutakikirwa v. United Republic of Tanzania*, ACtHPR, Application No. 013/2016, Judgment of 24 March 2022 (merits and reparations), § 88.

Judgment is necessary. Given the current state of law in the Respondent State, threats to liberty associated with the denial of the right to bail with respect to certain categories of crimes persist in the Respondent State. There is also no indication whether measures are being taken for the laws in this regard to be amended and align international human rights obligations. The Court thus finds it appropriate to order publication of this Judgment.

iv. Implementation and reporting

143. Both Parties, apart from making a generic prayer that the Court should grant other reliefs as it deems fit, did not make specific prayers in respect of implementation and reporting.

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144. The justification provided earlier in r publication of the Judgment is equally applicable in respect of implementation and reporting. The Court therefore orders the Respondent State to amend its Section 148(5) of its Criminal Procedure Act within three (3) years from the date of notification of this judgment and report on measures undertaken to do so every six (6) months until the Court considers that there has been full implementation thereof.

IX. COSTS

145. Each Party prays the Court to order that the other Party should bear the costs.

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146. The Court observes that Rule 32(2) of otherwise decided by the Court, each pa

147. The Court does not find any justification to depart from the above provisions in the circumstances of the case, and therefore rules that each Party shall bear its own costs.

X. OPERATIVE PART

148. For these reasons:

THE COURT,

On jurisdiction

Unanimously,

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

On admissibility

iii. *Dismisses* the objections to the admissibility of the Application;
iv. *Declares* that the Application is admissible.

On merits

v. *Holds* that the Respondent State did not violate the Applicant's right to be heard under Article 7(1) of the Charter;
vi. *Holds* that the Respondent State did not violate the Applicant's right to non-discrimination and the right to equality before the law and equal protection of the law provided for in Articles 2 and 3 of the Charter;
vii. *Holds* that the Respondent State violated the Applicant liberty guaranteed under Article 6 of the Charter by removing the discretion of the judicial officer to decide on the grant of bail to the

Applicant from the time of arrest until his conviction as read together with Article 9(3) of the ICCPR;

viii. *Holds* that the Respondent State violated the Applicant's right to free legal assistance provided for under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

On reparations

On pecuniary reparations

ix. *Awards* the Applicant the sum of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) for moral damage;

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

On non-pecuniary reparations

xi. *Dismisses* the Applicant's prayers for release;

xii. *Orders* the Respondent State to take all the necessary measures, within three (3) years of the notification of this Judgment, for the amendment of Section 148 (5) of its Criminal Procedure Act to entrench the discretion of the judicial officer in considering bail in line with paragraph (vii) of this Operative Part;

xiii. *Orders* the Respondent State to publish this Judgment, within a period of three (3) months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the Judgment is accessible for at least one (1) year after the date of publication;

xiv. *Orders* the Respondent State to submit to it, 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,