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

STEPHEN JOHN RUTAKIKIRWA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 013/2016

JUDGMENT

24 MARCH 2022

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The Court composed of: Blaise TCHIKAYA, Vice President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO - Judges; and Robert ENO – Registrar,

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 8(2) of the Rules of Court[1] (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Stephen John RUTAKIKIRWA
Self-represented

Versus

UNITED REPUBLIC OF TANZANIA,
Represented by:

i. Mr Gabriel P. MALATA, Solicitor General, Office of the Solicitor General
ii. Ms Sarah MWAIPOPO, Director, Division of Constitutional Affairs and Human Rights
iii. Ambassador Baraka LUVANDA, Director, Legal Affairs, Ministry of Foreign Affairs, East Africa and International Cooperation
iv. Ms Nkasori SARAKIKYA, Principal State Attorney, Attorney General's Chambers
v. Mr Mussa MBURA, Director, Civil Litigation
vi. Ms Aida KISUMO, Senior State Attorney, Attorney General's Chambers

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

vii. Mr Elisha SUKA, Foreign Service Officer, Legal Affairs, Ministry of Foreign Affairs, East Africa, Regional and International Cooperation

after deliberation,

renders the following Judgment:

I. THE PARTIES

1. Mr. Stephen John Rutakikirwa (hereinafter referred to as "the Applicant") is a national of Tanzania, who at the time of filing of the Application was at Butimba Central Prison, serving a term of thirty (30) years' imprisonment having been convicted, at the District Court of Bukoba, of the offence of armed robbery of Mr. Aziz Karamuna. He challenges the conduct of his trial in the national 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, through which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs (hereinafter referred to as "the Declaration"). On 21 November 2019, the Respondent State deposited, with the African Union Commission an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.[2]

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

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The record before this Court indicates that on 12 November 1998 at 3.30 am within the Kagera region, the Applicant broke into and entered the home of Mr. Aziz Karamuna. Mr Karamuna raised an alarm and confronted the Applicant, who stabbed him with a knife on both arms. The Applicant tried to make away with "a TV deck, four cushions and a radio cassette" but was apprehended by the neighbours, and was handed over to the police.

4. On 9 July 1999, he was charged, before the District Court at Bukoba, with armed robbery. On 12 November 1999, he was convicted of the charge and sentenced to thirty (30) years imprisonment.

5. The Applicant appealed against his conviction and sentence to the High Court, which on 4 March 2008, dismissed his appeal. On 26 May 2008, he appealed to the Court of Appeal of Tanzania, which confirmed the conviction and sentence on 11 November 2011.

B. Alleged violations

6. The Applicant alleges the violation of his rights to a fair trial, namely the right to be heard and the right to defence.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 3 March 2016, served on the Respondent State on 21 March 2016 and transmitted to the entities listed under Rule 42(4) of the Rules[3] on 12 April 2016.

[3]Rule 35 (3) of the Rules of Court, 2 June 2010.

8. The parties filed their pleadings on the merits and reparations of the Application having benefited from several extensions of time.

9. Pleadings were closed on 12 April 2021 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

10. The Applicant prays the Court to:

i) Find that his rights were violated as alleged; quash his conviction and set aside his sentence ;
ii) Grant him reparations pursuant to Article 27(1) of the Protocol to the tune of five million, seven hundred thousand (TZS 5,700,000) Tanzanian Shillings;
iii) Grant him any other reliefs that the Court may deem fit.

11. The Respondent State prays the Court to grant the following orders:

i) That the Honourable Court is not vested with jurisdiction to adjudicate the Application;
ii) That the Application has not met the admissibility requirements stipulated under Rule 40(6) of the Rules of Court;
iii) That the Applicant's prayers be dismissed;
iv) That the Applicant continue to serve his lawful sentences;
v) That the Applicant not be granted reparations;
vi) That the Application be dismissed in its entirety for lack of merit.

12. The Respondent State also prays the Court to find that it has not violated any of the rights of the Applicant.

V. JURISDICTION

13. The Court observes that Article 3 of the Protocol provides as follows:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
>
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

14. In accordance with Rule 49(1) of the Rules, "[t]he Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, the Protocol and these Rules".

15. On the basis of the above-cited provisions, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

16. The Respondent State raises an objection to the material jurisdiction of the Court.

A. Objection to material jurisdiction

17. The Respondent State objects to the material jurisdiction of the Court on the basis that the Applicant is requesting the Court to sit as an appellate court on matters that have already been concluded by its municipal courts.

18. According to the Respondent State, Rule 26 of the Rules[4] clearly delimits the Court's jurisdiction and thus the Court does not have the power to "quash the conviction delivered by the Court of Appeal, set aside sentences nor order the release of the Applicant from prison."

[4] Rule 29(1)(a) of the Rules of Court, 25 September 2020.

19. The Applicant argues that the Court has jurisdiction to consider this Application as the Application raises alleged violations of Article 3(1) and (2) and 7(1)(c) and (d) of the Charter.

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20. The Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights in relation to which a violation is alleged are protected by the Charter, the Protocol or any other human rights instrument ratified by the Respondent State.[5]

21. The Court recalls, its established jurisprudence, "that it is not an appellate body with respect to decisions of national courts". However "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned."[6]

22. The Court notes that, in the instant case, the Applicant alleges the violation of his right to a fair trial which is provided for in the Charter, to which the Respondent State is a party. Thus, the Court is not being requested to sit as an appellate court, but rather is acting within the confines of its powers.

23. In view of the foregoing, the Court therefore rejects the Respondent State's objection and finds that it has material jurisdiction to consider this Application.

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[5] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015), 1 AfCLR 465 §§ 45 ; *Kennedy Owino Onyachi and Another v. United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 65 § 34 -36 ; *Jibu Amir alias Mussa and another v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 329 § 18; *Masoud Rajabu v United Republic of Tanzania*, ACtHPR, Application No. 008/2016 Judgment of 25 June 2021 (merits and reparations) § 21.

[6] *Kenedy Ivan v. United Republic of Tanzania* (merits) (March 2019) 3 AfCLR 48 § 26; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 247 § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287 § 35.

B. Other aspects of jurisdiction

24. The Court notes, with respect to its personal jurisdiction that, as earlier stated in 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.

25. The Court recalls its jurisprudence that, the withdrawal of a Declaration does not apply retroactively and only takes effect twelve (12) months after the notice of such withdrawal has been deposited, in this case, on 22 November 2020.[7] This Application having been filed before the Respondent State deposited its notice of withdrawal, is thus not affected by it. Consequently, the Court finds that it has personal jurisdiction.

26. With respect to its temporal jurisdiction, the Court notes that the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the alleged violations are continuing in nature since the Applicant remains incarcerated on the basis of what he considers an unfair process. Consequently, the Court holds that it has temporal jurisdiction to consider the Application.[8]

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

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

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[7] *Ingabire Victoire Umuhoza v. Rwanda* (juridiction) (3 June 2016) 1 AfCLR 540 § 67; *Cheusi v Tanzania* (merits), *op.cit*, §§ 35-39.

[8] *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197 §§ 71 - 77.

VI. ADMISSIBILITY

29. In terms of Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter."

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

> Applications filed before the Court shall comply with the following conditions:
>
> a. Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b. Comply with the Constitutive Act of the Union and the Charter;
> c. Not contain any disparaging or insulting language;
> d. Not based exclusively on news disseminated through the mass media;
> e. Be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. Be filed 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;
> g. Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

A. Objections to the admissibility of the Application

31. The Respondent State submits that the Application does not comply with Rule 40(5) and 40(6)[9] of the Rules in relation to exhaustion of local remedies and on the requirement to file applications within a reasonable time after exhaustion of local remedies.

[9] Rule 50(2)(e) and (f) of the Rules, 25 September 2020.

i. Objection based on non-exhaustion of local remedies

32. Citing the decision of the African Commission on Human and Peoples' Rights of *Southern African Human rights NGO Network and others v Tanzania*, the Respondent State submits that the exhaustion of local remedies is an essential principle in international law and that the principle requires a complainant to "utilise all legal remedies" in the domestic courts before seizing the International body like the Court.[10]

33. Referring to *Article 19 v Eritrea*, the Respondent State submits that the onus is on the Applicant to demonstrate that he took all the steps to exhaust the domestic remedies and not merely to cast aspersions on the effectiveness of those remedies.[11]

34. In this regard, the Respondent State avers that there were remedies available to the Applicant which he should have exhausted. The Respondent State also contends that it enacted the Basic Rights and Duties Enforcement Act, to provide the procedure for the enforcement of constitutional and basic rights as set out in Section 4 thereof.[12] It argues that, the Applicant should have filed a petition to the High Court alleging the violations of his rights. It adds that, the Applicant also had the option of filing an Application for review of the Court of Appeal judgment, if he was not satisfied with the same.

35. The Applicant submits that his Application should be found admissible according to "Articles 5(3) and 6(1) and (2) of the Protocol".

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[10] ACHPR, *Southern African Human rights NGO Network and others v Tanzania* Communication No. 333/2006.
[11] ACHPR, *Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR 2007).
[12] "If anybody alleges that any of the provisions of Section 12 to 29 of the Constitution has been, is being, or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress."

36. The Court notes pursuant to Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, that, 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 deal with human rights violations within their jurisdictions before an international human rights body is called upon to determine the State's responsibility for the same.[13]

37. This Court has also stated in a number of cases involving the Respondent State that the remedies of filing a constitutional petition in the High Court and use of the review procedure in the Tanzanian judicial system are extraordinary remedies that an Applicant is not required to exhaust prior to seizing this Court.[14]

38. In the instant case, the Court notes from the record, that the Applicant having been convicted at the District Court of Bukoba filed an appeal against his conviction and sentence to the High Court, which dismissed his appeal and then appealed before the Court of Appeal of Tanzania, the highest judicial organ of the Respondent State, and on 11 November 2011, the Court of Appeal upheld the judgment of the High Court. The Court further notes that the claims raised by the Applicant herein were also raised in substance in the national courts, in that he had also challenged the assessment of evidence in the High Court and Court of Appeal.[15]The Respondent State thus had the opportunity to redress the alleged violations. Therefore, the Applicant exhausted all the available domestic remedies.

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

[14] See *Alex Thomas v Tanzania* (merits)*, op. cit.* § 65; *Mohamed Abubakari v Tanzania* (merits) (3 June 2016) 1 AfCLR 599 §§ 66-70; *Christopher Jonas v Tanzania* (merits) (28 September 2017) 2 AfCLR 101 § 44.

[15] See *Alex Thomas v United Republic of Tanzania* (merits) (2015) 1 AfCLR 465, § 60; *Kennedy Owino Onyanchi and Njoka v. United Republic of Tanzania* (merits) (2017) 2 AfCLR 65 § 54.

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

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

40. The Respondent State submits that the Applicant has not complied with the requirement under Rule 40(6) of the Rules[16], that an application must be filed before the Court within a reasonable time after exhaustion of local remedies. It asserts that the Applicant's case at the national courts was concluded on 11 November 2011, and it took four (4) years and four (4) months for the Applicant to seize this Court.

41. Noting that Rule 40(6) of the Rules[17] does not prescribe the time limit within which individuals are required to file an application, the Respondent State draws this Court's attention to the fact that the African Commission[18] has held a period of six (6) months to be the standard of reasonable time.

42. The Respondent State argues that the Applicant allowed a reasonable amount of time to elapse before filing the matter in this Court. Thus, it argues that the Application is improper and should be "dismissed".

43. The Applicant did not address this objection specifically but reiterated that his Application should be found admissible according to "Articles 5(3) and 6(1) and (2) of the Protocol."

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44. The Court notes that Rule 50(2)(f) of the Rules which in substance restates the contents of Article 56(6) of the Charter, requires an Application to be filed within: "a reasonable time from the date local remedies were exhausted or from the

[16] Rule 50(2)(f) of the Rules of the Court.
[17] *Ibid.*
[18] *Michael Majuru v Zimbabwe* (2008) AHRLR 146 (ACHPR 2008).

date set by the Court as being the commencement of the time limit within which it shall be seized with the matter."

45. The Court recalls its jurisprudence, that: "…the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[19] Some of the circumstances that the Court has taken into consideration include: imprisonment, being lay without the benefit of legal assistance[20], indigence, illiteracy, lack of awareness of the existence of the Court, intimidation and fear of reprisals[21] and the use of extra-ordinary remedies.[22]

46. In the instant Application, the Court observes that the judgment of the Court of Appeal in Criminal Appeal No. 47 of 2003 was delivered on 11 November 2011. The Court notes that four (4) years, four (4) months and (2) days elapsed between 11 November 2011 and 13 March 2016 when the Applicant filed the Application before this Court. The issue for determination is whether the period that the Applicant took to file the Application before the Court is reasonable.

47. The Court recalls its jurisprudence where it held that the period of five (5) years and one (1) month was reasonable because the Applicants were imprisoned, restricted in their movements and with limited access to information; they were lay, indigent, did not benefit from the assistance of a lawyer in their trials at the domestic court, were illiterate and were not aware of the existence of the Court.[23]

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[19] *Norbert Zongo v. Burkina Faso* (merits), *op. cit*, § 92. See also *Alex Thomas v. Tanzania* (merits) *op.cit*,, § 73**;**

[20] *Alex Thomas v Tanzania* (merits), *op.cit*, § 73, *Christopher Jonas v Tanzania* (merits) *op.cit*, § 54, *Ramadhani v. Tanzania*, (merits) (11 May 2018) 2 AfCLR 344 § 83.

[21] *Association Pour le progress et la Defense des droit des Femmes Maliennes and the Institute for Human Rights and Development in Africa v. Republic of Mali* (merits) (11 May 2018), 2 AfCLR 380 § 54.

[22] *Armand Guehi v. Tanzania* (merits and reparations) *op.cit* § 56; *Werema Wangoko v United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520 § 49, *Alfred Agbes Woyome v Republic of Ghana,* (merits and reparations) (28 June 2019) 3 AfCLR 235 §-§ 83-86.

[23] *Christopher Jonas v. Tanzania* (merits) (28 September 2017) 2 AfCLR 101 § 54, *Amiri Ramadhani v. Tanzania* (merits) (11 May 2018), 2 AfCLR 344 § 50.

48. The Court recalls that in the present case, the Applicant is incarcerated, restricted in his movements and with limited access to information, he was also not assisted by counsel in the cases at the national courts. Taking into consideration these circumstances, the Court finds the period of four (4) years, four (4) months and two (2) days to be reasonable.

49. Accordingly, the Court dismisses the objection relating to the non-compliance with the requirement of filing the Application within a reasonable time after exhaustion of local remedies.

B. Other conditions of admissibility

50. The Court notes that there is no contention regarding the compliance with the conditions set out in Rule 50(2) (a), (b), (c), (d) and (g) of the Rules. Even so, it must satisfy itself that these conditions have been met.

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

52. The Court notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof is, the promotion and protection of human and peoples' rights. Furthermore, nothing on file indicates that the Application is incompatible with the Constitutive Act of the African Union. Therefore, the Court holds that the requirement of Rule 50(2)(b) of the Rules is met.

53. The language used in the Application is not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules.

54. The Application is not based exclusively on news disseminated through mass media as it is founded on legal documents in fulfilment with Rule 50(2)(d) of the Rules.

55. Furthermore, 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 fulfilment of Rule 50(2)(g) of the Rules.

56. The Court, therefore, finds that all the admissibility conditions have been met and that this Application is admissible.

VII. MERITS

57. The Applicant avers that the Respondent State has violated Articles 7(1)(c) and (d) of the Charter in relation to the following allegations:

    i. The Court of Appeal erred in its assessment of the evidence;
    ii. Violation of the right to free legal assistance.

A. Allegation relating to the assessment of evidence

58. The Applicant argues that the Court of Appeal erred in reaching its decision as it did not consider all the evidence that he adduced. He further avers that he submitted several grounds of appeal with evidence to substantiate the same but the Court of Appeal "combined his grounds of appeal to (6) six" thereby violating his right under Article 3(1) and (2) of the Charter.

59. The Respondent State disputes the submission of the Applicant herein and argues that the Court of Appeal noted that the Applicant advanced "a total of

five (5) grounds of appeal" and then considered all of them before making its finding. Consequently, it avers that this allegation lacks merit and should be dismissed.

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60. The Court notes that although the Applicant has relied on Article 3 of the Charter to support the alleged violation, his claim questions the fairness of the conduct of his appeal and more aptly falls under Article 7 of the Charter.

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

62. This Court has in the past noted ".... 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."[24]

63. In the instant case, the Applicant alleges that the Court of Appeal only considered some of his grounds of appeal which resulted in prejudice against him. Nevertheless, he did not substantiate this allegation.

64. Furthermore, the Court observes from the record that the Court of Appeal noted that the Applicant advanced five (5) grounds of appeal during the hearing of the appeal. Subsequently, the Court evaluated each and every ground on its merit and concluded that the Applicant's appeal lacked merit.

65. The Court thus finds that the manner in which the Court of Appeal evaluated the Applicant's appeal does not disclose any manifest error or miscarriage of

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[24] *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.

justice. The Court therefore, dismisses this allegation and finds that the Respondent State has not violated Article 7(1) of the Charter.

B. Alleged violation of the right to free legal assistance

66. The Applicant contends that he was not provided with free legal assistance during the proceedings in the national courts in violation of Article 7(1)(c) of the Charter.

67. The Respondent State submits that the provision of legal aid is not mandatory according to its Criminal Procedure Act. It further argues that the fact that the Applicant did not benefit from free legal assistance did not occasion miscarriage of justice because he was afforded other fair trial guarantees such as being allowed to provide his evidence and also call witnesses.

68. Consequently, the Respondent State submits that the allegation herein is "utterly baseless and devoid of merit."

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69. Article 7(1)(c) of the Charter provides as follows: "[e]very individual shall have the right to have his cause heard. This comprises: […] c) The right to defence, including the right to be defended by counsel of his choice."

70. The Court notes that Article 7(1)(c) of the Charter does not provide explicitly for the right to free legal assistance. This Court has however, interpreted this provision in light of Article 14(3)(d) of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR")[25], and determined that the

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

right to defence includes the right to be provided with free legal assistance.[26] The Court has also held that an individual charged with a criminal offence is entitled to free legal assistance without having requested for it, provided that the interests of justice so require. This will be the case where an accused is indigent and is charged with a serious offence which carries a severe penalty.[27]

71. The Court notes that the Applicant was not afforded free legal assistance throughout the proceedings in the national courts. The Court further notes that the Respondent State does not dispute that the offence is serious and the penalty provided by law is severe, it only contends that the denial of legal aid did not occasion miscarriage of justice.

72. Given that the Applicant was charged with the serious crime of armed robbery, carrying a severe mandatory punishment of thirty (30) years' imprisonment; the interest of justice warranted that he be provided with free legal assistance.[28]

73. By failing to provide free legal assistance, the Court finds that the Respondent State violated Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR.

VIII. REPARATIONS

74. The Applicant prays the Court to quash his conviction and sentence and order his release. Further, he prays that the Court grant him reparations for the violations suffered.

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[26] *Alex Thomas v Tanzania* (merits) § 114; *Isiaga v Tanzania* (merits), § 72; *Onyachi and Njoka v United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65 § 104.
[27] *Alex Thomas v Tanzania op.cit.*, § 123, see also *Mohammed Abubakari* v *Tanzania* (merits) § § 138-139.
[28] *Ibid*.

75. The Respondent State prays the Court to deny the Applicant's request for reparations.

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76. Article 27(1) of the Protocol provides: "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."

77. 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". [29]

78. 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."[30]

79. 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.[31]

80. The Court further 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

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[29] *Mohamed Abubakari v Tanzania* (merits) § 242 (ix), *Umuhoza v Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202 § 19.

[30] *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.

[31] *Ingabire Umuhoza v Rwanda* (reparations) *op. cit*, § 20.

provide evidence to justify his prayers.[32] With regard to moral prejudice, the Court exercises judicial discretion in equity.

A. Pecuniary Reparations

81. The Applicant in his submissions on reparations avers that he has suffered hardship as he was charged and convicted of armed robbery on the basis of unfair proceedings. He further submits that his wife and five (5) children have been deprived of a husband and a father and thus prays the Court to grant him a total amount of Five Million, Seven Hundred Thousand (5,700,000) Tanzanian shillings (TZS) as "compensation" for the time spent in prison illegally.

82. The Respondent State avers that the Applicant has failed to prove the wrongful act that it committed and failed to provide evidence that he suffered prejudice as alleged. Furthermore, that he has failed to show a causal link between the alleged violations and prejudice suffered and thus submits that the Applicant's prayer for reparations should be dismissed.

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83. The Court notes in the instant case, that the Applicant has not established the link between the violation found and the prejudice which he claims to have suffered. The Court thus rejects the prayer for Tanzanian Shillings Five million, Seven Hundred Thousand (TZS 5,700,000).

84. The Court recalls that its only finding in the present case was that the Respondent State violated the Applicant's right to free legal assistance by

[32] *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 § 15.

failing to avail him the services of counsel in the course of his trials in the domestic courts.

85. The Court notes that the violation it established caused moral prejudice to the Applicant and therefore, in exercising its discretion in equity, awards an amount of Tanzanian Shillings Three Hundred Thousand (TZS 300,000) as fair compensation.[33]

B. Non-Pecuniary Reparations

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

87. The Respondent State submits that "this Court has no criminal jurisdiction to nullify the Applicant's sentence and order his release from prison".

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88. 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 that required its intervention.

89. As regards the prayer for release, the Court has stated that this measure can be ordered only in specific and compelling circumstances. This would be 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

[33] See *Anaclet Paulo v United Tanzania* (merits) (21 September 2018) 2 AfCLR 446 § 107; *Minani Evarist v United Republic of Tanzania*, (merits) (21 September 2018) 2 AfCLR 402 § 85.

arbitrary considerations and his continued imprisonment would occasion a miscarriage of justice."[34]

90. In the instant case, the Court recalls that it has found that the Respondent State violated the Applicant's right to a fair trial by failing to provide him with free legal assistance. Without minimising the gravity of the violation, the Court considers that the nature of the violation in the instant case does not reveal any circumstance that signifies that the Applicant's imprisonment 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.[35]

91. In view of the foregoing, the Court dismisses the Applicant's prayer to quash his conviction and order his release.

IX. COSTS

92. The Respondent State prays the Court to order the Applicant to bear its costs.

93. Pursuant to Rule 32(2) of the Rules[36] "unless otherwise decided by the Court, each party shall bear its own costs."

94. The Court finds no reason to depart from this provision. Consequently, it rules that each party shall bear its own costs.

[34] *Minani Evarist v Tanzania* (merits) *op.cit.*, § 82.
[35] *Jibu Amir alias Mussa and another v. Tanzania* (merits and reparations), § 97; *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 112; and *Minani Evarist v. Tanzania* (merits and reparations), § 82.
[36] Rule 30 of the Rules of Court, 2 June 2010.

X. OPERATIVE PART

95. For these reasons:

The COURT

Unanimously,

On jurisdiction

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

On admissibility

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

On merits

v. *Finds* that the Respondent State has not violated the Applicant's right to a fair trial under Article 7(1) of the Charter as regards the Court of Appeal's assessment of the evidence;
vi. *Finds* that the Respondent State has violated the Applicant's right to defence under Article 7(1)(c) of the Charter as read together with Article 14(3)(d) of the ICCPR for failure to provide free legal assistance;

On Reparations:

On Pecuniary Reparations

vii. *Rejects* the prayer for material prejudice;
viii. *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);

ix. *Orders* the Respondent State to pay the sum of Tanzanian shillings Three Hundred Thousand 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

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

On Implementation and Reporting

xi. *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 (viii) and (ix) of this operative part and thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs

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

Signed:

Blaise TCHIKAYA, Vice President;

Ben KIOKO, Judge;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

M-Thérèse MUKAMULISA, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Modibo SACKO, Judge;

and

Robert ENO, Registrar.

Done at Arusha, this Twenty Fourth day of March, in the Year Two Thousand and Twenty Two in English and French, the English text being authoritative.

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THE MATTER OF STEPHEN JOHN RUTAKIKIRWA V. UNITED REPUBLIC OF TANZANIA

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