



PRESS RELEASE
JUDGMENT SUMMARY

WILFRED ONYANGO NGANYI AND 9 OTHERS
V.
UNITED REPUBLIC OF TANZANIA
APPLICATION No. 006/2013
JUDGMENT ON REPARATIONS
A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 4 July 2019

Arusha, 4 July 2019: Today, the African Court on Human and Peoples' Rights (the Court) delivered judgment in the case of Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania.

The Applicants, Mr. Wilfred Onyango NGANYI, Boniface Mwangi MBURU, David Ngugi MBURU, Michael Mbanya WATHIGO, Peter Gikura MBURU, Simon Githinji KARIUKI, Jimmy Maina NJOROGE, Patrick Muthe MURIITHI, Gabriel Kungu KARIUKI and Simon Ndung'u KIAMBUTHI, nationals of the Republic of Kenya, filed an Application before the Court on 23 July 2013, alleging that their rights to a fair trial had been violated during proceedings before the courts of the Respondent State, the United Republic of Tanzania. The case in the domestic court arose from the Applicants' arrest in Mozambique and their transfer to the Respondent State where they were detained and prosecuted on charges of murder and armed robbery.

Of the ten (10) Applicants, five (5) were acquitted and released on 5 March 2014 after the murder charge was withdrawn for lack of evidence. These are Michael Mbanya Wathigo, David Ngugi Mburu, Boniface Mwangi Mburu, Peter Gikura Mburu and Simon Githinji Kariuki. Two (2) Applicants, Boniface Mwangi Mburu and Simon Githinji Kariuki, died on 17 September 2015 and their spouses joined the proceedings before this Court. The other five (5), Wilfred Onyango Nganyi, Jimmy Maina Njoroje, Patrick Muthe Muriithi, Gabriel Kungu Kariuki and Simon Ndung'u Kiambuthi,



PRESS RELEASE JUDGMENT SUMMARY

were convicted of armed robbery and were each sentenced to a thirty (30) year prison term. Their appeals are still pending before the Court of Appeal.

As part of the proceedings on the merits of the case, the Applicants challenged their unlawful arrest and detention in the domestic courts of the Respondent State. In the Judgment it rendered on 18 March 2016, the Court found the Respondent State in violation of the Applicants' rights to a fair trial, pursuant to Article 7(1)(c) and (d) of the African Charter on Human and Peoples' Rights (the Charter). The Court also found that the delay in commencing the Applicants' trial was of thirty (30) months and fourteen (14) days. In the Judgment on the merits, the Parties were directed to make submissions in relation to reparations. The decision that is being delivered today is the Judgment of the Court on the reparations sought by the Applicants.

The Applicants made several prayers for pecuniary and non-pecuniary reparations, all of which were refuted by the Respondent State. Pursuant to the findings of violations made in the Judgment on the merits, and in consideration of its case law and that of other international courts, the Court determined that the Applicants are entitled to reparations.

PECUNIARY REPARATIONS:

With respect to pecuniary reparations, the Applicants sought reparation for **material loss**, which they alleged ensued from almost six (6) years of detention. The Respondent State challenged the claim as baseless on the ground that the Applicants were lawfully prosecuted and imprisoned. On this prayer, the Court held that the claim for material damage was not justified with respect to the Applicants who were convicted. However, the Applicants who were acquitted were entitled to some compensation, based mainly on the Court's precedent in the matter of *Lohé Issa Konate v. Burkina Faso*. This loss, as the Court held, is to be remedied on a case-by-case basis and quantified based on sufficient evidence. Consequently, the Court granted a discretionary amount of US Dollars Two Thousand (US\$2,000) to one acquitted Applicant, David Ngugi Mburu, for loss of income and US Dollars Two Hundred (US\$250) to another acquitted Applicant, Peter Gikura Mburu, for medical expenses. The other Applicants were denied material damages, because they were unable to provide satisfactory evidence of the loss suffered.



PRESS RELEASE JUDGMENT SUMMARY

The Applicants also sought reparation for material loss ensuing from legal fees disbursed during the ten (10) years of proceedings before domestic courts. The Respondent State challenged the claim for lack of evidence and being manifestly excessive. With respect to this prayer, the Court found that only three of the Applicants who were acquitted, that is David Ngugi Mburu, Michael Mbanya Wathigo, and Peter Gikura Mburu, had provided sufficient justification and it awarded them compensation of Tanzania Shillings One Million and Eight Hundred Thousand (TZS1,800,000), Tanzania Shillings Fifty Thousand (TZS50,000) and Tanzania Shillings Two million (TZS2,000,000) respectively.

Regarding **non-material loss**, the Applicants claimed reparation essentially for pain and suffering throughout the lengthy criminal proceedings. The Respondent State refuted all claims for moral prejudice since the Applicants had received adequate care from the government while in detention. In this respect, the Court noted that despite its order in the Judgment on the merits that measures be taken “*within a reasonable time to expedite and finalise*” the criminal cases, additional prejudice was suffered by the Applicants whose appeals were still pending more than two (2) years after the Judgment on the merits. Accordingly, the Court awarded US Dollars Three Thousand (US\$3,000) to the acquitted Applicants, Michael Mbanya Wathigo, David Ngugi Mburu and Peter Gikura Mburu, and to each of the representatives of beneficiaries of the deceased Applicants, Boniface Mwangi Mburu and Simon Githinji Kariuki, who are Winnie Njoki Mwangi and Margaret Nyambura Githinji; and US Dollars Four Thousand (US\$4,000) to the convicted Applicants whose appeals are still pending, that is Wilfred Onyango Nganyi, Jimmy Maina Njoroge, Patrick Muthe Muriithi, Gabriel Kungu Kariuki and Simon Ndung’u Kiambuthi. As a reparation for the lack of provision of legal aid during their trial, all Applicants were each awarded Tanzania Shillings Three Hundred Thousand (TZS300,000).

In addition to the pecuniary reparations prayed for, the Applicants claimed compensation for indirect victims alleging that they suffered emotional harm. This claim was challenged by the Respondent State as baseless. The Court ruled that there was “*hardly any doubt that the close relatives of the Applicants suffered moral damage*”. Therefore, for the acquitted Applicants, each wife was awarded US Dollars One Thousand (US\$1,000), each



PRESS RELEASE
JUDGMENT SUMMARY

child was awarded US Dollars Eight Hundred (US\$800), and each parent (father and mother) was awarded US Dollars Five Hundred (US\$500). The Court did not award damages with respect to long imprisonment and disruption of the life plan to Applicants who were convicted, as it had held in the Judgment on the merits that the prejudice alleged ensued from actions of the Respondent State which did not fundamentally affect the outcome of domestic proceedings.

NON-PECUNIARY REPARATIONS:

The Applicants prayed for an order to be released from prison, which the Respondent State averred was a *vexatious and frivolous* claim which ought to be dismissed. The Court reiterated that the prayer was not warranted because the violations found in the Judgment on merits did not fundamentally affect the outcome of the proceedings and the delayed proceedings were appropriately remedied.

The Applicant also prayed the Court to order the Respondent State to guarantee non-repetition of the violations against them and report every six (6) months until the decision is implemented. The Respondent State contended that this was unnecessary since the same order was already canvassed in the Judgment on the merits. Having observed that the likelihood of repetition is non-existent as far as some Applicants were concerned and remedy was duly afforded with respect to other Applicants, the Court found that the order sought was not warranted and dismissed it. Conversely, the Court granted the order that the Respondent State report on implementation on the ground that it is inherent in its Judgment.

Finally, the Applicants prayed the Court to order that the Respondent State to publish the Judgment in the national Gazette. The Respondent State argued that the Judgment on the merits is already widely available on the Court's website, and the prayer should be denied. The Court held that considering that more than two (2) years had passed without the Respondent State completing the appeals as ordered in the Judgment on the merits, an order for publication is warranted for the Judgments on the merits and reparations. The Respondent State was thus ordered to publish the two Judgments, within three (3) months of notification of the Judgment on reparations, on the Websites of the Judiciary and that



PRESS RELEASE JUDGMENT SUMMARY

of the Ministry of Constitutional and Legal Affairs and ensure that these remain accessible for at least one (1) year.

In respect of costs, the Court rejected the Applicants' claim for costs and other expenses related to the proceedings before it on the ground that the Applicants were all afforded legal aid and supported by the Pan African Lawyers Union under the Court's legal aid scheme, which is *pro bono* in nature. The Court consequently ordered that each party shall bear its own costs, for any other expenses related to proceedings before the Court.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at <http://www.african-court.org/en/index.php/55-finalised-cases-details/859-app-no-006-2013-wilfred-onyango-nganyi-9-others-v-united-republic-of-tanzania-details>. For any other queries, please contact the Registrar by email to registrar@african-court.org.

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