



PRESS RELEASE
JUDGMENT SUMMARY

MOHAMED ABUBAKARI
V.
UNITED REPUBLIC OF TANZANIA
APPLICATION No. 007/2013
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 a judgment in the case of Mohamed Abubakari v. United Republic of Tanzania.

The Applicant, Mohamed Abubakari filed an Application before the Court on 8 October 2013, against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"). In the Application, he alleged that his rights to a fair trial had been violated by the Respondent State during his trial before the domestic courts, following which he was convicted of the offence of armed robbery and sentenced to thirty (30) years imprisonment.

In the Court's judgment rendered on 3 June 2016, the Court held that the Respondent State violated Article 7 of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") and Article 14 of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR). Having found these violations, the Court ordered the Respondent State to take all appropriate measures within a reasonable time frame to remedy the violations established, excluding a reopening of the trial and to inform the Court of the measures so taken, within six (6) months from the date of the Judgment.

The judgment delivered today pertains to the Court's findings in respect of the claims for reparations made by the Applicant.



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OBJECTION TO JURISDICTION

The Respondent State raised a preliminary objection to the competence of the Court to make orders on reparations on the grounds that the Court had no jurisdiction to grant reparations for acts or violations, which occurred before the United Republic of Tanzania deposited its Declaration, under Article 34(6) 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), accepting its jurisdiction to receive complaints from individuals and Non-Governmental Organisations. The Applicant prayed the Court to disregard the objection on the basis that raising a preliminary objection after judgment has been delivered is redundant and a waste of time. He also maintained that the violation of his rights are continuous in nature and therefore the Respondent State became bound through its action of depositing its Declaration, thereby giving the Court jurisdiction over the Application and powers to order reparations.

The Court in dismissing the Respondent State's objection to its jurisdiction, found that it had jurisdiction to decide on reparations, on the grounds that having found, in its judgment on the merits, that the Respondent State violated Article 7 of the Charter and Article 14 of the ICCPR, its jurisdiction also extends to reparations since the Application involved the same Parties and facts. The Court also reiterated its powers under Article 27 (1) of the Protocol to determine reparations.

PECUNIARY REPARATIONS

In his claim for reparations, the Applicant requested pecuniary reparations for material damage from loss of income and loss of life plan, as a result of his arrest, trial and imprisonment for thirty (30) years. The Respondent State challenged the claim as baseless on the ground that the Applicant was lawfully prosecuted and imprisoned. The Court dismissed the Applicant's claim for material damage on the basis of its finding that the Applicant, who claimed to be a business man, did not have a regular source of income and did not provide any proof of his income to the Court.

The Applicant also prayed the Court to grant him pecuniary reparations for moral prejudice suffered as a result of the violation of his rights as a direct victim. He claimed to have suffered



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emotional, physical, health and financial strain due to the judicial processes, his imprisonment, and from his inability to exercise his conjugal rights with his wife. He also stated that he lost his social status in the community and was no longer regarded as a credible business man. The Respondent State contested this assertion stating that, all the Applicant suffered were expected consequences of his imprisonment for the crimes that he committed. The Court in its decision, found that moral prejudice was caused to the Applicant as a result of the violations found and decided to award him Tanzanian Shillings 2,000,000 (TZS Two Million) as compensation.

The Applicant also claimed that his relatives, namely, his wife Lukresia L Laurent, his son Ibrahim Mohamed, his nephew Abiola Mansuri and his siblings, Judith Nelson, Mbaraka Abubakari and Sara Chirumba, all suffered varying degrees of emotional trauma as indirect victims, as a result of his imprisonment. The claim was contested by the Respondent State on the grounds that every trauma suffered by the Applicant's relatives were consequences of crimes for which he was lawfully tried and convicted by domestic courts and there was no proof of his affiliation to his wife, nephew and siblings. The Court in its decision found, based on the existence of a presumption of marriage in the laws of the Respondent State, and the birth certificate of the son, Ibrahim Mohamed, that there was a link between Lukresia L Laurent and the Applicant. The Court then decided that Lukresia L. Laurent is entitled to compensation for moral prejudice she suffered as an indirect victim, and awarded her compensation of Tanzanian Shillings One Million, Five Hundred Thousand (TZS 1, 500,000). The Court also awarded the Applicant's son, Ibrahim Mohamed, Tanzanian Shillings One Million (TZS 1,000,000), as compensation for moral prejudice he suffered as an indirect victim. The Court dismissed the claim for moral damages to the Applicant's nephew Abiola Mansuri and his siblings, Judith Nelson, Mbaraka Abubakari and Sara Chirumba, on the grounds that there was no proof of their affiliation to the Applicant.

NON PECUNIARY REPARATIONS

The Applicant prayed for an order to be released from prison. The Court in its decision dismissed the Applicant's prayer on the grounds that the prayer was moot, due to the fact that the Applicant had been released after having served his term in prison.



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The Applicant also prayed the Court to order the Respondent State to guarantee non-repetition of the violations against him and report every six (6) months until the decision of the Court is implemented. The Respondent State contested this prayer on the ground that it was “untenable, awkward, baseless and misconceived” and that the Applicant was requesting the Respondent State to report to the Court for orders which have never been granted. The Court dismissed the prayer for an order to guarantee non-repetition, on the ground that there was no possibility of the violations being repeated with regards to the Applicant. The Court also decided that since the Respondent State had passed the Legal Aid Act, this amounts to a measure guaranteeing non-repetition. On the prayer to report on implementation, the Court decided that this order is inherent in its judgments, but reiterated the obligation of the Respondent State as set out in Article 30 of the Protocol and enjoined the Respondent State to take appropriate measures to implement the judgment on reparations and report same to the Court.

Lastly, the Applicant prayed the Court to order the Respondent State to publish the Court’s judgment in its National Gazette as a measure of satisfaction, a prayer which the Respondent State challenged on the basis that it was practically impossible to publish a 74 page judgment in the National Gazette. The Court, considering the contention of the Respondent State, decided that the Respondent State should publish the judgment on the merits and reparations on the official websites of the Judiciary and the Ministry of Constitutional and Legal Affairs of the Respondent State and for the judgments to remain accessible for at least one (1) year after the date of publication.

In respect of costs, the Court rejected the Applicant’s claim for costs and other expenses related to the proceedings on the ground that the Applicant was 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 each party to bear its own costs.

Further Information

Further information about this case, including the full text of the decisions of the African Court, may be found on the website at <http://en.african-court.org/index.php/55-finalised-cases-details/860-app-no-007-2013-mohamed-abubakari-v-united-republic-of-tanzania-details>. For any other queries, please contact the Registrar by email to registrar@african-court.org.



African Court
on Human and Peoples' Rights

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