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| الاتحاد الأفريقي | | UNIÃO AFRICANA |
| AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES | | |

THE MATTER OF

MOHAMED ABUBAKARI

V

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 007/2013

**JUDGMENT
(REPARATIONS)**

4 JULY 2019



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The Court composed of: Sylvain ORÉ, President; Ben KIOKO, Vice-President; Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, Suzanne MENGUE, M-Thérèse MUKAMULISA Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Judges; and Robert ENO, Registrar.

Pursuant to 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 (hereinafter referred to as "the Rules"), Judge Imani D. ABOUD, member of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Mohamed ABUBAKARI

represented by:

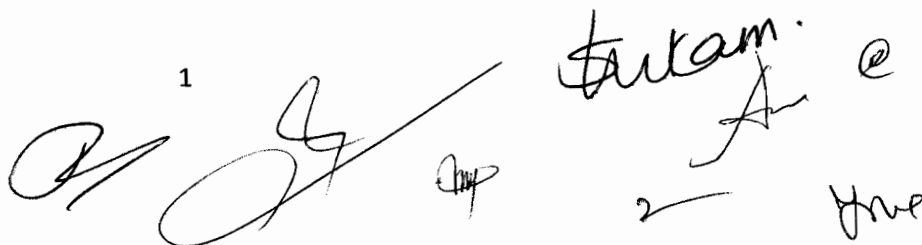
Advocate Donald O. DEYA, Pan African Lawyers Union (PALU)

Versus

UNITED REPUBLIC OF TANZANIA

represented by:

- i. Dr Clement J. Mashamba - Solicitor General, Office of the Solicitor General;
- ii. Ms. Sarah MWAIPOPO, Director, Constitutional Affairs and Human Rights, Attorney General's Chambers;
- iii. Mr. Zachariah ELISARIA, Senior State Attorney, Attorney General's Chambers;

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- iv. Ms. Nkasori SARAKEYA, Principal State Attorney, Attorney General's Chambers;
- v. Mr. Benedict T. MSUYA, Second Secretary, Legal Officer, Ministry of Foreign Affairs and International Cooperation;
- vi. Mr. Michael LUENA, Principal State Attorney. Attorney General's Chambers;
- vii. Mr. Veritas MLAY, State Attorney, Attorney General's Chambers.

after deliberation,

delivers the following Judgment:

I. SUBJECT OF THE APPLICATION

1. The Application for reparations was filed by Mr Mohamed Utolu Abubakari (hereinafter referred to as "the Applicant") against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), pursuant to the judgment of the Court on the merits delivered on 3 June 2016. In the said judgment, the Court decided 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"), in respect of:
 - i. the Applicant's alleged right to defend himself and to have the benefit of a Counsel at the time of his arrest;
 - ii. the Applicant's right to obtain free legal assistance during the judicial proceedings;
 - iii. the Applicant's right to be promptly given the documents in the records to enable him defend himself;

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- iv. the Applicant's right to his defence based on the fact that the Prosecutor before the District Court had a conflict of interest with the victim of the armed robbery, considered by the Judge;
 - v. the Applicant's right not to be convicted solely on the basis of the inconsistent testimony of a single witness in the absence of any identification parade; and
 - vi. the Applicant's right to have his *alibi* defence given serious consideration by the Respondent State's police and judicial authorities.¹
2. 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.
 3. Pursuant to Rule 63 of the Rules, the Court ordered the Applicant to file his submissions on reparations within thirty (30) days of the judgment of 3 June 2016 and the Respondent to file submissions in response thereto within thirty (30) days of receipt of the Applicant's submissions.

II. BRIEF BACKGROUND OF THE MATTER

4. The above-mentioned judgment of the Court of 3 June 2016 was on the merits of the Application filed by the Applicant on 8 October 2013. In the Application, he alleged that his rights to a fair trial had been violated by the Respondent State during his trial at the domestic courts, following which he was convicted of the offence of armed robbery and sentenced to thirty (30) years imprisonment.

¹ Application 007/2013. Judgment of 3 June 2016 (Merits), *Mohamed Abubakari v United Republic of Tanzania* (hereinafter referred to as "*Mohamed Abubakari v Tanzania* (Merits)") §242 (ix).

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III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. On 6 June 2016, the Registry transmitted a certified true copy of the judgment on the merits to the Parties.
6. The Parties filed their submissions on reparations within the time stipulated by the Court.
7. On 28 September 2018, pleadings were closed and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

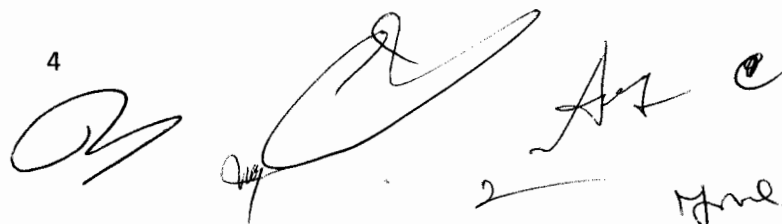
A. Applicant's Prayers

8. The Applicant prays the Court to grant him the following reparations:

"

- i. Monies as detailed in the claims in paragraph 63-68;
- ii. That this Honourable Court orders for the restoration of Applicant's liberty by his release from prison where he is currently serving an unlawful sentence;
- iii. We pray that this Honourable Court applies the principle of proportionality when considering the award for compensation to be granted;
- iv. That this Honourable Court makes an order that the Respondent guarantees non-repetition of these violations against the Applicant. The Respondent State should also be requested to report back to this Honourable Court every six months until they satisfy the orders this Court shall make when considering the submissions for reparations;

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- v. We also ask that the government publishes in the national Gazette the decision of 3 June 2016 in both English and Swahili as a measure of satisfaction.
- vi. Any other reparations this Honourable Court shall deem necessary. ”

9. In paragraph 63-68 of the Applicant's submissions on reparations, he requested that the Court should grant him pecuniary reparations as follows:

- a. On moral prejudice, the Applicant, prays the Court to award him the sum of United States Dollars, two hundred and sixty one thousand, one hundred and eleven (US\$261,111), for being imprisoned for nineteen (19) years and seven (7) months;
- b. On loss of income, the Applicant prays the Court to award him the sum of United States Dollars, six hundred and fifty-two thousand, seven hundred and seventy eight (US\$652,778).
- c. On legal fees, the Applicant prays the Court to award legal fees for 400 hours of legal work, comprising 300 hours for two Assistant Counsel and 100 hours for the lead Counsel, calculated at United States Dollars two hundred (US\$200) per hour for the lead Counsel and United States Dollars one hundred and fifty (US\$150) per hour for the Assistant Counsel. This amounts to United States Dollars twenty thousand (US\$20,000) for the lead Counsel and United States Dollars forty five thousand (US\$45,000) for the two Assistant Counsel.
- d. On moral damages for indirect victims, the Applicant prays the Court to grant members of his family the following:

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- i. United States Dollars, six hundred and fifty two thousand, seven hundred and seventy eight (\$652,778), paid to his wife, Lucrecia Laurent Mohamed;
 - ii. United States Dollars, three hundred and ninety one thousand, six hundred and sixty seven (\$391,667), paid to his son, Ibrahim Mohamed;
 - iii. United States Dollars, two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his sister, Judith Nelson;
 - iv. United States Dollars, two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his sister, Sara Chirumba;
 - v. United States Dollars, two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his younger brother, Mbaraka Abubakari;
 - vi. United States Dollars, two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his nephew, Abiola Mansuri.
- e. On award for other costs incurred, that is, transport, postage and stationery, the Applicant, urges the Court to order reimbursement, totalling United States Dollars, one thousand, three hundred and ninety nine (\$1,399), broken down as follows:
- i. Postage - United States Dollars, seventeen (US\$17);
 - ii. Printing and photocopying - United States Dollars, two hundred and sixty two (US\$262);
 - iii. Trips to and from Karanga Prison - United States Dollars, one thousand, one hundred and twenty (US\$1,120).

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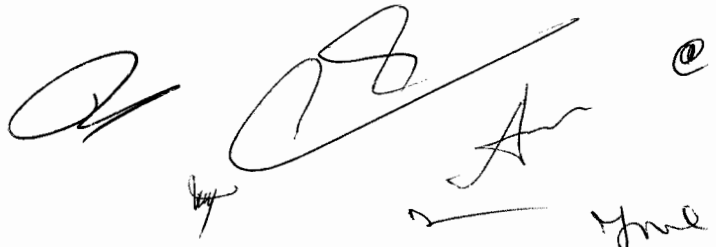
B. Respondent State's Prayers

10. The Respondent State in its Response, prays the Court to make the following orders and declarations:

"

- i. That, the judgment of the Court dated 3 June, 2016 is sufficient reparation to the prayers found in the Applicant's submission for reparations;
- ii. That, the Applicant be ordered to submit to the Court and the Respondent, verification and evidence of the computed amount sought;
- iii. That, the Applicant's claims for lawyer's fees should be set at the scale of the legal aid scheme established by the Court both for the main case and the subsidiary case on reparations;
- iv. That, the prayer for restoration of the Applicant's liberty be denied;
- v. That, the prayer for restoration of the Applicant's liberty is contemptuous of the judgment of the African Court;
- vi. That, the African Court be pleased to order that there was no gross violation of international human rights law and international humanitarian law;
- vii. That, the Applicant should not be granted reparations;
- viii. That, the Applicant's claim for reparations be dismissed in its entirety with costs;
- ix. Then, justice would be done;

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- x. That since all the alleged violations occurred before Tanzania deposited its declaration to accept complaints from individuals then the Court has no mandate to order reparations for acts committed before 29 March 2010. ”

V. OBJECTION TO JURISDICTION

11. The Respondent State raises a preliminary objection on the jurisdiction of the Court and challenges its competence to make orders on reparations. The Respondent State contends that “the African Court has no jurisdiction to grant reparations for acts/violations which occurred before the United Republic of Tanzania deposited its Declaration accepting the jurisdiction of the Court to receive complaints from individuals and Non-Governmental Organisations.”
12. The Respondent State avers that the last decision of the domestic court of Tanzania was delivered on 5 October 2004, while Tanzania deposited its Declaration on 29 March 2010. This therefore means that the Court has no mandate to order reparations for acts that were committed before 29 March 2010.
13. The Applicant in response prays the Court to dismiss the preliminary objection. He states that Rule 52 (2) of the Rules provide for when preliminary objections should be raised.
14. He argues that raising a preliminary objection after judgment has been delivered in a case is redundant and a waste of time. He also maintains that the violation of rights are continuous in nature and therefore the State became bound through its action of depositing its Declaration, thereby giving the Court jurisdiction over the Application and powers to order reparations.

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15. 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.”
16. The Court notes that it established its jurisdiction in the merits judgment of this Application, where it found violations of Article 7 of the Charter and Article 14 of the ICCPR². The Court is of the opinion that its jurisdiction also extends to the reparations part of the Application because it involves the same Parties and same facts. The Court considers that following its finding of violation, it is empowered under the Protocol to determine the reparations that should be awarded to the Applicant.
17. The Court therefore finds that it has jurisdiction to decide on reparations in this Application and dismisses the Respondent State’s objection to that effect.

VI. REPARATIONS

18. Article 27 (1) of the Protocol provides that “If the Court finds that there has been violation human or peoples’ rights, it shall make appropriate orders to remedy the violation including the payment of fair compensation or reparation.”
19. The Court recalls its earlier judgments³, 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.”⁴

² *Mohamed Abubakari v Tanzania* (Merits), §233 and 242 (xiii).

³ Application No. 013/2011. Judgment of 5/6/2015 (Reparations), *Beneficiaries of the Late Norbert Zongo and Others v. Burkina Faso* (hereinafter referred to as “*Norbert Zongo and Others v. Burkina Faso* (Reparations)”) §20; Application No. 004/2013, Judgment of 3/6/2016 (Reparations), *Lohé Issa Konaté v. Burkina Faso*, (hereinafter referred to as “*Konate v Burkina Faso* (Reparations)”), § 15.

⁴ Application No. 003/2014, Judgment of 7/12/2018 (Reparations), *Ingabire Victoire Umuhoza v. Republic of Rwanda* (hereinafter referred to as “*Ingabire Victoire v Rwanda* (Reparations)”) § 20-22.

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20. The Court also restates that, the purpose of reparation being *restitutio in integrum*, it "...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."⁵
21. Measures that a State must take to remedy a violation of human rights include restitution, compensation and rehabilitation of the victim, measures of satisfaction, as well as measures to ensure non-repetition of the violations, taking into account the circumstances of each case.⁶
22. The Court reiterates that with regard to material prejudice, there must be an existence of a causal link between the alleged violation and the prejudice caused, and the burden of proof is on the Applicant who has to provide evidence to justify his prayers⁷. The exception to this is that the burden of proof may shift to the Respondent State, when there is a presumption of moral prejudice to the Applicant as a result of the violation found.
23. The Applicant has made claims in United States Dollars. As a general principle, damages should be awarded, where possible, in the currency in which loss was incurred.⁸ Taking into account fairness and considering that the Applicant should not be made to bear the adverse fluctuations that are inherent in financial activities, the Court will determine the quantum and currency of the award.
24. The Court notes that the Applicant's request to be paid compensation in United States Dollars, is not justified. The Court considers that the Applicant is a

⁵ PCIJ, *Factory At Chorzow, Germany v. Poland, Jurisdiction, Determination of Indemnities and Merits* 26/7/1927, 16/12/1927 and 13/9/1928, Rec. 1927, p. 47.

⁶ *Ingabire Victoire v Rwanda (Reparations)* § 20.

⁷ *Konate v Burkina Faso (Reparations)* §15; *Norbert Zongo and Others v. Burkina Faso reparations* §§ 20-30; Application No.011/2011. Judgment of 13/6/2014 (Reparations) *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (hereinafter referred to as "*Christopher Mtikila v. Tanzania*" (Reparations)) §§ 27, 28 & 40.

⁸ *Ingabire Victoire v Rwanda (Reparations)* § 45.

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Tanzanian national, resident in Tanzania where the violations occurred and the legal tender is Tanzanian Shillings, it will therefore award compensation in Tanzanian Shillings.

25. The Applicant has prayed for pecuniary reparations for (a) material loss, (b) moral prejudice that he and indirect victims suffered and non-pecuniary reparations in the form of (a) restitution of liberty (b) guarantees of non-repetition and (c) measures of satisfaction.

A. Pecuniary reparations

i. Material loss - Loss of income and life plan

26. The Applicant states that even though the judgment of 3 June 2016 is a form of reparation, the Court should consider granting him monetary compensation for losses he suffered, based on the principle of equity.

27. In this regard, the Applicant avers that he was a businessman and financially supported his wife, son, parents and siblings. He claims that he lost all his businesses following his imprisonment and if released from prison, he would have no source of income. He relies on the jurisprudence of the Inter-American Court in *Aloeboetoe v Suriname*⁹ to support his argument that he should be awarded reparations for loss of income.

28. Furthermore, the Applicant claims that his life plan has been disrupted and that he has been unable to achieve his plans and goals because of his arrest, trial and imprisonment. He relied on the Inter-American case of *Loayza-Tamayo v.*

⁹ Inter-American Court of Human Rights (IACHR) case of *Aloeboetoe et al v. Suriname*, Judgment of 10 September 1993, (Reparations and Costs) § 68.

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Peru,¹⁰ to support his claim that he is entitled to reparations for the loss of his life plan.

29. Consequently, he requests that the Court should award him the sum of United States Dollars, six hundred and fifty two thousand, seven hundred and seventy eight (\$652,778), as material damages for loss of income and life plan.

30. The Respondent State contests the submission of the Applicant, stating that he was charged, prosecuted, convicted and sentenced due to his criminal acts. Furthermore, that his sentence is legal and in accordance with the laws in force in the United Republic of Tanzania.

31. The Respondent State asserts that the loss of the Applicant's source of income is of his own making for trying to make quick money without working for it. The Respondent State also avers that the Applicant's life plan was disrupted by his illegal act which at the same time disrupted the lives of the victims of the armed robbery who suffered considerable loss and trauma as a result of the Applicant's actions.

32. The Court recalls its position in the *Zongo* case, where it stated that: "in accordance with international law, for reparation to accrue, there must be a causal link between the wrongful act that has been established and the alleged prejudice".¹¹

33. The Court also recalls its jurisprudence in the *Mtikila* case where it stated that:

¹⁰ IACHR Judgment of September 17, 1997 *Loayza-Tamayo v Peru*, § 150.

¹¹ *Norbert Zongo and Others v. Burkina Faso* (Reparations) §24

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"It is not enough to show that the Respondent State has violated a provision of the Charter; it is also necessary to prove the damage that the Respondent State is being required by the Applicant to indemnify. In principle, the existence of a violation of the Charter is not sufficient per se, to establish a material damage"¹²

34. The Court notes that the Applicant's claims that he was a businessman prior to his arrest and sentence, are not supported by evidence. The Court also recalls that in its judgment on the merits, it had noted that nothing in the Applicant's records, showed that he had a regular income prior to his arrest.¹³ It also emerges from the Applicant's submission that failure of the Respondent State to grant him legal aid was because of discrimination on the grounds that he was poor.

35. The Court is therefore of the considered opinion that the Applicant, having no source of regular income, has not justified with proof, his claim for compensation amounting to United States Dollars, six hundred and fifty two thousand, seven hundred and seventy eight (\$652,778.00), for material prejudice resulting from the loss of income and life plan.

36. In light of this consideration, the Court does not find justifiable grounds to grant this request. This prayer regarding material damages is therefore dismissed.

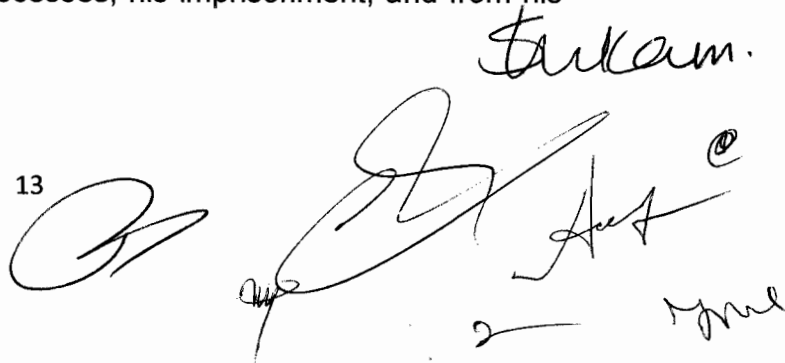
ii. Moral prejudice

a. Moral prejudice suffered by the Applicant

37. The Applicant in his affidavit claims that he suffered emotional, physical and financial strain due to the judicial processes, his imprisonment, and from his

¹² *Christopher Mtikila v. Tanzania* (Reparations) § 31

¹³ *Mohamed Abubakari v Tanzania* (Merits) § 143

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inability to exercise his conjugal rights with his wife. He also states that he lost his social status in the community, which has resulted in embarrassment to him, as he is now regarded as a criminal and no longer recognised as a credible business man.

38. The Applicant further claims that his health deteriorated significantly as he now suffers from ailments that are not limited to, a broken arm, deteriorating eye sight, haemorrhoids, anal fissures and skin diseases.
39. The Applicant prays that the Court, in calculating the moral damages, should apply equity and take into account the severity of the violation and the impact it has had on him. He further asks the Court to give weight to the period of time he was imprisoned and make reparations that would at least alleviate the suffering that he endured. Citing the decision of the Court in the *Konate*¹⁴ case, where the Applicant was awarded twenty thousand US Dollars (US\$20,000.00), as moral damages for eighteen (18) months imprisonment, he is of the view that what he suffered is of a higher gravity and the period he was imprisoned nineteen (19) years and seven (7) months, is also significantly longer than that of the Applicant in the *Konate* case.
40. Consequently, the Applicant urges the Court to grant him an award of two hundred and sixty one thousand, one hundred and eleven US Dollars (\$261, 111.00), as compensation for moral prejudice to him, as a direct victim.
41. The Respondent State contests the submission of the Applicant and states that even before his conviction, he was suffering from ill health and there is no proof that if he was not imprisoned, he would not have become ill. The Respondent State also avers that, the loss of his social status is self-inflicted because of the armed robbery he was involved in.

¹⁴ *Konate v Burkina Faso* (Reparations) §60 (v).

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42. The Respondent State further states that the emotional anguish the Applicant suffered was as a result of his unlawful act, that any trial was bound to be emotional and the State cannot refrain from prosecuting persons for crimes for fear that their feelings would be hurt. The Respondent State further asserts that loss of contact with his relatives is a personal issue that has nothing to do with the law and that the said relatives had the opportunity to visit him in prison. Furthermore, his denial of conjugal rights with his wife was due to his imprisonment, which was as a result of his criminal acts of armed robbery, for which he was sentenced to prison.

43. The Court recalls that moral prejudice to an Applicant is presumed when a violation of his rights has been found, without the need for him to demonstrate with evidence, a link between the violation and the prejudice.¹⁵

44. Furthermore, the Court has also held that the evaluation of amounts to be awarded for non-material damage must be done in fairness and taking into account the circumstances of the case.¹⁶ In such instances, awarding lump sums would generally apply as the standard.¹⁷

45. The Court notes in the instant case that the Applicant's claim for moral damages, arises as a result of the decision of the Court, that his rights to a fair trial and defence were violated by the Respondent State.

46. The Court however, considers that the amount sought by the Applicant as compensation for moral prejudice, that is, United States Dollars two hundred

¹⁵*Norbert Zongo v. Burkina Faso* (Reparations) § 61; *Ingabire Victoire v Rwanda* (Reparations) § 59.

¹⁶ *Ibid* § 61.

¹⁷ *Ibid* § 62.

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and sixty one thousand one hundred and eleven (US\$261,111), is excessive.

47. In light of these considerations, the Court finds that the Applicant is entitled to compensation for moral prejudice, and awards him the sum of two million Tanzanian Shillings (TZS 2,000,000).

b. **Moral prejudice to indirect victims**

48. The Applicant, relying on the *Zongo case*, seeks compensation for his family as indirect victims as follows:

- i. United States Dollars six hundred and fifty two thousand, seven hundred and seventy eight (\$652,778), paid to his wife, Lucrecia Laurent Mohamed;
- ii. United States Dollars three hundred and ninety one thousand, six hundred and sixty seven (\$391,667), paid to his son, Ibrahim Mohamed;
- iii. United States Dollars two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his sister, Judith Nelson;
- iv. United States Dollars two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his sister, Sara Chirumba;
- v. United States Dollars two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his younger brother, Mbaraka Abubakari;
- vi. United States Dollars two hundred and sixty one thousand, one hundred and eleven thousand (\$261,111), paid to his nephew, Abiola Mansuri.

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49. The Applicant requests that the Court should consider the fact that his son was barely two years old when he was arrested, and his son never had the opportunity to be raised by his father and have a good education due to his father's imprisonment. He states that his wife suffered from his incarceration as she was left without her best friend, confidant and sole source of income and had to fend for their son alone. He claims that she also had to face the emotional trauma and stigma of having a convict as a husband and suffered mental, emotional, physical and financial losses.
50. He further states that his parents also suffered as a result of their son's absence. He states that they went through emotional, physical and mental distress as a result of his imprisonment and his father passed away in 2003 after battling with pulmonary tuberculosis and hypertension. His mother struggled to survive living with the social stigma of having a son who is a convicted criminal. She also passed away in 2015 after struggling to find money to put food on the table.
51. The Applicant also claims that his siblings Judith Nelson, Mbaraka Abubakari and Sara Chirumba suffered and continue to suffer as a result of his imprisonment. He stated that they had to travel to visit him numerous times in the prisons he was detained during his imprisonment and suffered financial, mental, emotional and physical anguish as a result of this. He claims that his siblings were also left to cater for his expenses while in prison, including the purchase of medicines and other basic necessities while he was in prison. They have also had to provide for his wife and son as a result of his absence.
52. The Applicant further claims that his nephew Abiola Mansuri should also be granted compensation, due to the fact that prior to his imprisonment, he was his nephew's sole provider. The Applicant claims that his nephew Abiola faced a lot of struggles as a result of his arrest - he lost a provider, his role model

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and the financial and other support provided by his uncle. He also suffered from the stigma of being related to a convict.

53. The Applicant prays that the Court, in evaluating the non-material damages, should apply equity and take into account the severity of the violation and the impact it has had on the indirect victims.

54. The Respondent State contends that, all consequences suffered by the Applicant's family are expected the consequences of his crimes. The Respondent State further asserts that he was convicted by competent courts and his appeals were completed in Tanzania, his separation from his wife and other relatives were self-inflicted by the Applicant and is personal to him and not a legal issue.

55. The Respondent State further avers that compensation for indirect victims cannot be quantified as the Applicant cannot assess their suffering since, he claimed that he had no contact with them during his imprisonment and awarding compensation to them would be unjustly enriching the Applicant.

56. The Respondent State also challenges the identity of the Applicant's relatives, on the grounds that the Applicant failed to provide any proof that he is the father of Ibrahim Mohamed; no marriage certificate is attached to show that he is married to Lukresia Kimario; and no birth certificate linking him to the siblings and his nephew, all of whom he mentioned in his submission as being indirect victims. The Respondent State further maintains that the national identification cards do not prove their kinship to the Applicant, neither has he shown proof of the damage he alleges they suffered.

57. The Respondent State further states that the death of the Applicant's parents cannot be connected to his imprisonment because the Applicant's father died

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of pulmonary tuberculosis and his mother died fifteen (15) years after the Applicant was imprisoned.

58. The Respondent State therefore prays the Court, to dismiss the Applicant's claim for reparations for moral prejudice to the indirect victims.

59. In respect of moral damages to his relatives, the Court has established that the determination of moral damages to those closest to an applicant will be done on a case- by- case basis.¹⁸ In this case, the Court recognises that the Applicant's wife, child and parents are his immediate next of kin. They are the most likely to have suffered moral prejudice as a result of his imprisonment.¹⁹

60. However, before the Court can order reparations for moral damages to these persons, there must be proof of affiliation between them and the Applicant. The Court also recalls that victimhood must be established in order to justify damages.²⁰

61. The Court recalls that a marriage certificate or other equivalent is sufficient proof of marriage and a birth certificate or other equivalent certificate, is sufficient to prove the affiliation of a child to an Applicant. In the same vein, "fathers and mothers of direct victims must produce only an attestation of paternity or maternity as well as life certificate or any other equivalent proof."²¹

62. The Court notes that the Applicant did not provide a formal marriage certificate that indicates he is married to Lukresia L. Kimario. The Court

¹⁸ *Nobert Zongo and others v Burkina Faso (Reparations) op. cit. §49*

¹⁹ *Ingabire Victoire v Rwanda (Reparations) § op. cit. 66.*

²⁰ Application No. 024/2015. Judgment of 7/12/2018 (Merits and Reparations), *Armand Guehi v. United Republic of Tanzania* (hereinafter referred to as "*Armand Guehi v. Tanzania (Merits and Reparations)*"), § 182; *Nobert Zongo and others v Burkina Faso (Reparations) op. cit. §§ 45-54.*

²¹ *Nobert Zongo and others v Burkina Faso (Reparations) op. cit. § 54.*

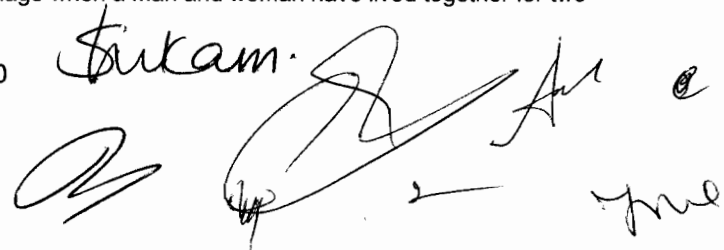
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however notes the existence of the common law marriage, where a couple is considered married legally, without formally registering their relationship as a civil or religious marriage. The marriage laws of the Respondent State provides for the presumption of marriage, where there has been cohabitation between a man and woman and also recognises that the failure to register a marriage does not affect the validity of the marriage.²² In addition, such presumption is further buttressed by the fact that on the birth certificate of their son, Lukresia L Kimario is designated as the mother of Ibrahim Mohamed and the Applicant is designated as the father, which clearly establishes a link between him and Lukresia L Kimario. The Court therefore finds that Lukresia L. Kimario is entitled to compensation for moral prejudice as an indirect victim and awards Tanzanian Shillings one million, five hundred thousand (TZS 1,500,000), to her as compensation.

63. Concerning the Applicant's claim for moral damages for his son, Ibrahim Mahamadu Ulotu, the Court notes that the Applicant supported the claim with a birth certificate, which is formal evidence that he is the boy's father. In the light of this, the Court decides that Ibrahim Mahamadu Ulotu is entitled to compensation for moral prejudice as an indirect victim and awards Tanzanian Shillings one million (TZS 1,000,000), to him as compensation.

64. The Court notes, concerning the Applicant's siblings and nephew, that the Applicant did not present any formal document as evidence that they are related by birth or by blood. The national identity cards and birth certificates attached in support of his claim, do not show proof of their affiliation to the Applicant, as these documents only attest to their identity. His request for reparations for moral damage to his siblings and nephew namely, Sarah Cirumba, Judith Nelson, Mbaraka A. Ulotu and Abiola Mansuri Olotu is therefore not established and the claim is dismissed.

²² Section 41 (f) and 160 (1) of the Law of Marriage Act of Tanzania 1971, provides that failure to register a marriage does not affect its validity and for the presumption of a marriage when a man and woman have lived together for two years or more.

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B. Non-pecuniary reparations

i. Restoration of Applicant's liberty

65. The Applicant in his submission states that although he cannot be returned to the state he was before his incarceration, his liberty can be restored as a second best measure under the circumstances. He supports his prayers by citing the African Commission in the *COHRE*²³ and *Egyptian Initiative for Personal Rights*²⁴ cases.

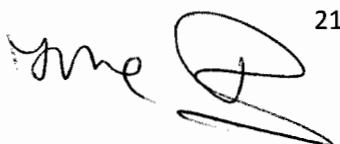
66. The Respondent State contests the Applicant's submission and argues that the Applicant was imprisoned by competent courts in Tanzania for his criminal acts, which were in violation of Sections 285 and 286 of the Penal Code, Article 26 of the Constitution of the Respondent State and Article 27 and 28 of the Charter.

67. Further, the Respondent State avers that the incarceration of the Applicant was "legal, proper and lawful", which is why this Court in its judgment on the merits did not grant his prayer to be released from prison.

68. The Court notes that on 13 November 2019, the Applicant's representative (PALU) informed the Court by letter that the Applicant was released from prison on 28 July 2017 after completing his sentence. The Court therefore dismisses this prayer.

²³ Communication 279/03-296/05, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, 27 May 2009.

²⁴ Communication 334/06- *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt* 01 March 2011 § 233(VI).

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ii. Guarantees of non-repetition and report on implementation

69. The Applicant prays the Court make an order that the Respondent State guarantees the non-repetition of violation of his rights. He also requests that the Court should order the Respondent State to report to the Court every six (6) months, until it satisfies the orders the Court shall make in its judgment on reparations.

70. The Respondent State disputes the Applicant's prayer for an order to guarantee non-repetition, stating that the prayer is "untenable, awkward, baseless and misconceived." Regarding the Applicant's request that the Respondent State should be ordered to report to the Court every six months, the Respondent State contests this prayer, stating that it is untenable because the Applicant "is requesting the Respondent State to report to the Court for orders which have never been granted."

71. The Court recalls that guarantees of non-repetition generally apply in cases of systemic violations.²⁵ However, this remedy is only relevant in individual cases, where the violation has not ceased, is likely to re-occur or is structural in nature.²⁶

72. The Court considers that the criminal proceedings are finalized and the Applicant was convicted. Therefore, the Court does not deem it necessary to issue an order regarding non-repetition of the violations of the Applicant's rights, since there is no possibility of such violations being repeated.²⁷

²⁵ *Armand Guehi v. Tanzania* (Merits and Reparations) § 191; *Norbert Zongo and Others v. Burkina Faso* (Reparations), §§ 103-106.

²⁶ *Armand Guehi v. Tanzania* (Merits and Reparations) § 191; and *Reverend Christopher R. Mtikila v. Tanzania* (Reparations), § 43.

²⁷ *Armand Guehi v. Tanzania* (Merits and Reparations), §§ 191 and 192.

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73. The Court also notes that in the Respondent State's report on implementation of the Court's judgment on the merits, filed on 3 January 2017, the Respondent State informed the Court of the Legal Aid Bill, which was being proposed to establish a comprehensive legal aid framework for indigent litigants, in both civil and criminal matters. The Legal Aid Bill was enacted by the Respondent State's Parliament on 21 February 2017 and published in the Official Gazette in March 2017. Consequently, the publication of this law constitutes a measure of guarantee of non-repetition. The claim is therefore dismissed.

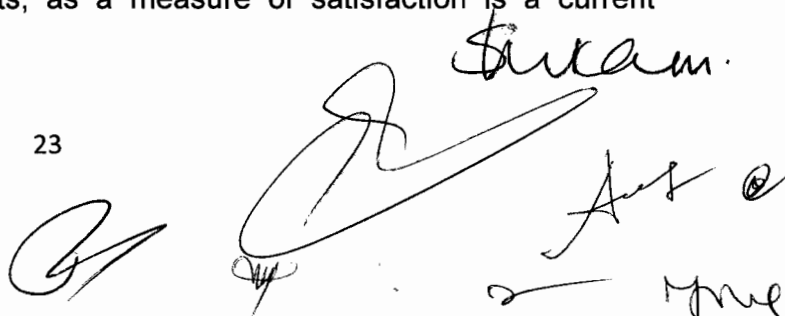
74. With respect to the Applicant's prayers for the Respondent State to report on the implementation of the Judgment, the Court notes that such an order is inherent in its judgments. However, the Court reiterates the obligation of the Respondent State as set out in Article 30 of the Protocol and enjoins the Respondent State to take appropriate measures to implement the judgment on reparations and report same to the Court.

iii. Measures of satisfaction

75. The Applicant requests the Court to order the Respondent State to publish the judgment of 3 June 2016 in the National Gazette of the United Republic of Tanzania, in both English and Swahili as a measure of satisfaction.

76. The Respondent State contends that there is no need to publish the decision of the Court and that it would not be possible to publish a decision of 74 pages in the Official Gazette.

77. Regarding the publication of the Court's judgment, the Court recalls its decision in the *Zongo judgment* where it noted that the publication of decisions of international human rights courts, as a measure of satisfaction is a current

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practice.²⁸ The Court also recalls the *Mtikila* judgment where it decided by its own motion to order the publication of its decisions as a measure of satisfaction²⁹.

78. The Court considers that although a judgment can constitute a form of satisfaction, it can order other forms of satisfaction as it deems fit, which include publication of the judgment. The publication would also serve as a tool for the enhancement of public awareness of the decisions of the Court.

79. However, taking into consideration the contention of the Respondent State that it would be practically impossible to publish a seventy four (74) page judgment in the Official Gazette, the Court decides that the Respondent State should take advantage of technology and disseminate, the judgments on the merits, and *suo motu* including this judgment on reparations, through websites of the Judiciary and Ministry of Constitutional and Legal Affairs of the Respondent State and remain accessible for at least one (1) year after the date of publication.

VII. COSTS

80. In terms of Rule 30 of the Rules “unless otherwise decided by the Court, each party shall bear its own costs.”

81. The Court recalls that in line with its earlier judgments, reparation may include payment of legal fees and other expenses incurred in the course of international proceedings.³⁰ However, the Applicant must provide justification for the amounts claimed.³¹

²⁸ *Norbert Zongo and others v Burkina Faso (Reparations) op. cit.* § 98.

²⁹ *Christopher R. Mtikila v United Republic of Tanzania (Reparations)* § 45 & 46 (5).

³⁰ See *Norbert Zongo and Others v. Burkina Faso (Reparations)*, §§ 79-93; and *Reverend Christopher R. Mtikila v. Tanzania (Reparations)*, § 39.

³¹ *Norbert Zongo and Others v. Burkina Faso (Reparations)*, § 81; and *Reverend R. Mtikila v. Tanzania (Reparations)*, § 40.

24 *Sukam.*  The block contains several handwritten signatures and initials. On the left, there is a signature that appears to be 'Sukam.' followed by a large, stylized signature. To the right, there are several smaller signatures and initials, including one that looks like 'A.S.' and another that looks like 'yue'.

A. Legal fees relating to proceedings before this Court

82. The Applicant, relying on the Zongo case³², where the Court held that reparations paid to victims may include reimbursement of lawyers fees, prays the Court to grant reparations for legal fees in relation to the proceedings before the Court, as follows:

- i. Legal fees for 100 hours of legal work at United States Dollars, two hundred (US\$200) per hour, for the lead counsel, totaling United States Dollars, twenty thousand (US\$20,000); and
- ii. Legal fees for 300 hours of legal work at United States Dollars, one hundred and fifty (US\$150) per hour, for two legal assistants respectively, totalling United States Dollars forty-five thousand (US\$45,000).

83. The Respondent State disputes the claims for legal fees made by the Applicant, stating that the Applicant applied for, and was granted legal aid by the Court. Hence, he did not engage a Counsel of his own, and did not incur any legal expenses in the proceedings before this Court.

84. The Respondent State further argues that the Pan African Lawyers Union (PALU) agreed to provide legal assistance to the Applicant and amount claimed as legal fees is exceedingly inflated. Furthermore, the Respondent State asserts that the unnamed two assistant Counsel mentioned in the claim are an afterthought because throughout the proceedings, only one Counsel's name, that is, Donald Deya, has featured as representing the Applicant.

³² *Robert Zongo and others v Burkina Faso (Reparations)* op. cit §79.

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85. The Court recalls its position in the *Zongo* case, where it stated that "...the reparation paid to the victims of human rights violations may also include the reimbursement of lawyers' fees".³³

86. The Court notes that in this case, the Counsel from the Pan African Lawyers Union (PALU), represented the Applicant before the Court on a *pro bono* basis under the Court's current legal aid scheme³⁴. The Court therefore finds no basis to grant the claim for legal fees by PALU. The prayer for legal fees is therefore rejected and the claim is dismissed.

B. Other expenses before this Court

87. The Applicant, relying on the *Zongo* case where the Court held that reparations can also include a reimbursement of transport fares and sojourn expenses³⁵, prays the Court to grant reparations for expenses incurred by his representatives on transportation, stationery and other costs, totalling United States Dollars, one thousand, three hundred and ninety-nine (US\$1,399). With receipts attached, his claims are broken down as follows:

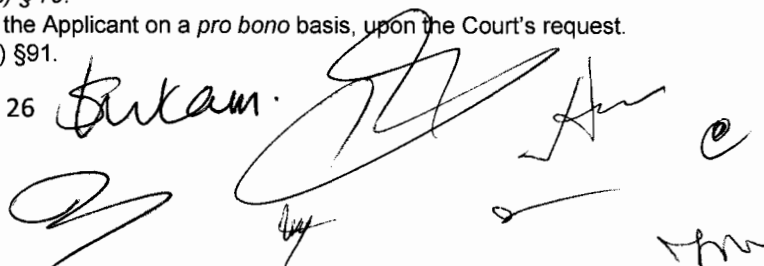
- i. On postage – United States Dollars, Seventeen (US\$17);
- ii. On printing and photocopying – United States Dollars, two hundred and sixty two (US\$262);
- iii. On trips to and from Karanga Prison – United States Dollars, one thousand, one hundred and twenty (US\$1,120);

88. The Respondent State disputes the claims of the Applicant for reparations for other expenses incurred, stating that the Applicant was granted legal aid by the Court and therefore the Counsel who represented him on a *pro bono* basis are not entitled to other costs.

³³ *Nobert Zongo and Others v Burkina Faso (Reparations)* § 79.

³⁴ The Pan African Lawyers Union accepted to represent the Applicant on a *pro bono* basis, upon the Court's request.

³⁵ *Nobert Zongo and others v Burkina Faso (Reparations)* §91.

Burkam


89. The Respondent State further argues that, the Applicant did not pray to be awarded costs in his application on the merits; there is no need for postage costs because the Counsel resides in Arusha; that all expenses for service and postage were borne by the Court and that the legal aid allowance paid by the Court is sufficient to cover all costs incurred, bearing in mind that the Counsel resides in Arusha.

90. The Court recalls its position in the *Mtikila Case* where it noted that: “ Expenses and costs form part of the concept of reparation”. However, the Applicant must provide justification for the amounts claimed.³⁶

91. The Court is of the considered opinion that expenses such as transport, postage and stationery costs fall under the “Categories of expenses that will be supported” in the current Legal Aid Policy of the Court, under which PALU represented the Applicant³⁷.

92. The Court notes, however, that the amount being claimed by the Applicant and the receipts presented to support the claims, exceed the amount granted by the Court, as a token amount to the Counsel who represented the Applicant before the Court to cover expenses³⁸. The Court finds that under these circumstances, these expenses amounting to United States Dollars Three Hundred and Ninety Nine, should be covered under the Legal Aid Scheme of the Court and not by the Respondent State.

³⁶ *Reverend R. Mtikila v. Tanzania (Reparations)*, § 40; *Norbert Zongo and Others v. Burkina Faso (Reparations)*, § 81.

³⁷ African Court on Human and Peoples' Rights Legal Aid Policy 2013-2014, 2015-2016 and from 2017.

³⁸ Under the Court's Legal Aid Scheme, counsel designated to represent Applicants are given United States Dollars one thousand (USD\$1000) as a token amount to cover expenses.

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93. Based on the above considerations, the Court decides that each Party shall bear its own costs.

VIII. OPERATIVE PART

94. For these reasons:

THE COURT,

Unanimously:

On jurisdiction

- i. *Dismisses* the objection on jurisdiction;
- ii. *Declares* that it has jurisdiction.

On pecuniary reparations

- iii. *Does not grant* the Applicant's prayer for material damages for loss of income and loss of life plan;
- iv. *Does not grant* the Applicant's prayer for reparations for moral prejudice to his siblings Sarah Chirumba, Judith Nelson, Mbaraka A. Ulotu and his nephew, Abiola Mansuri Olotu;
- v. *Grants* the Applicant's prayers for moral damages suffered by him and the indirect victims and awards compensation to them as follows:

- a. Tanzanian Shillings Two Million (TZS 2,000,000), to the Applicant;

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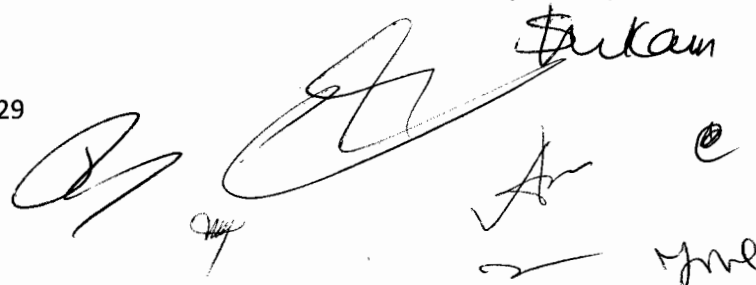
- b. Tanzanian Shillings One Million, Five Hundred Thousand (TZS 1,500,000), to the Applicant's wife, Lukresia L. Kimario; and
 - c. Tanzanian Shillings One Million (TZS 1,000,000), to the Applicant's son Ibrahim Mahamadu Ulotu,
- vi. *Orders* the Respondent State to pay the amounts indicated under (v) (a), (b) and (c), free from taxes effective six (6) months, from the date of notification of this Judgment, failing which, it will pay interest on arrears calculated on the basis of applicable rates of the Central Bank of the United Republic of Tanzania, throughout the period of delayed payment and until the amount is fully paid;

On non-pecuniary reparations

- vii. *Does not grant* the Applicant's prayer to be released from prison as this is moot;
- viii. *Does not grant the* Applicant's prayer for an order regarding non-repetition of the violations;
- ix. *Orders* the Respondent State to publish this judgment on reparations and the judgment of the Court of 3 June 2016 on the merits, within three (3) months of notification of the present judgment, on the official websites of the Judiciary and the Ministry of Constitutional Affairs, as a measure of satisfaction and ensure that the judgments remain accessible for at least one (1) year after the date of such publication.

On implementation and reporting

- x. *Orders* the Respondent State to submit to it, within six (6) months of the date of notification of this judgment, a report on measures taken to implement the orders set forth herein and thereafter, every six (6)

Arkan

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months until the Court considers that there has been full implementation thereof.

On costs

xi. *Does not grant* the Applicant's prayer related to legal fees, costs and other expenses incurred in the proceedings before this Court;

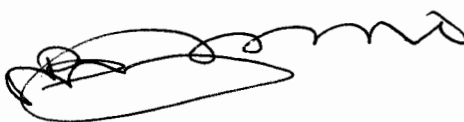
xii. *Decides* that each Party shall bear its own costs.

Signed:

Sylvain ORÉ, President,



Ben KIOKO, Vice-President;



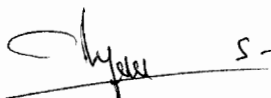
Rafaâ BEN ACHOUR, Judge;



Ângelo V. MATUSSE, Judge;



Suzanne MENGUE, Judge;



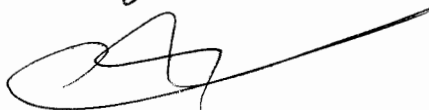
M-Thérèse MUKAMULISA, Judge;



Tujilane R. CHIZUMILA, Judge;



Chafika BENSAOULA, Judge;



Blaise TCHIKAYA, Judge;



Stella I. ANUKAM, Judge;



and

Robert ENO, Registrar



Done at Arusha, this Fourth Day of July in the Year Two Thousand and Nineteen, in English and French, the English text being authoritative.



J. Karim
June

2019-07-04

Judgment on Reparations in the Matter of Mohamed ABUBAKARI Vs United Republic of Tanzania Delivered on 04 July 2019

African Court on Human and Peoples' Rights

African Court on Human and Peoples' Rights

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