

Mango and Mango v Tanzania (review) (2019) 3 AfCLR 405

Application 002/2018, *Thobias Mang'ara Mango and Shukurani Masegenya Mango v United Republic of Tanzania*

Decision, 4 July 2019. Done in English and French, the English text being authoritative.

Judges: KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA and ANUKAM

Recused under Article 22: ABOUD

The Applicants filed an Application for review of the judgment on merits in which the Court found that the Respondent State violated Articles 7(1) (c) and 1 of the Charter and dismissed other allegations on the ground that they were not substantiated. The Court found that the claims of the Applicants were just a repetition of what they had claimed in the merits judgment with the exception of their claim that the Court of Appeal based its judgment on erroneous findings. The Court held that this particular information was new information but did not constitute new evidence as it only sought to substantiate the claims raised in the merits judgment.

Review (time for filing Application for review, 13, lack of new information, 16, 17, 24-26)

I. The Parties

1. Messrs Thobias Mang'ara Mango and Shukurani Masegenya Mango (hereinafter referred to as "the Applicants"), filed an Application on 11 February 2015 against the United Republic of Tanzania (hereinafter referred to as "the Respondent State") alleging that the Respondent State violated their rights under the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"), the Universal Declaration of Human Rights, the Constitution and Penal Code of the Respondent State. On 11 May 2018, the Court delivered its judgment on the merits of the matter.

II. Subject matter of the Application

2. Following the Court's judgment of 11 May 2018 on the merits, in the matter of *Thobias Mang'ara Mango and Shukurani Masegenya Mango and Another v United Republic of Tanzania*, on 6 November 2018, the Applicants filed an Application for Review of that judgment.
3. In the Application for Review, the Applicants reiterated some of the claims of violation of their rights by the Respondent State that

were stated in their initial Application to the Court and reproduced on paragraphs 11 and 12 of the Court's judgment of 11 May 2018. They request the review on the basis of the following grounds:

- i. The principles of law and practice governing the matter of visual identification were neither met nor considered by the Trial Court;
- ii. They were denied a chance to be heard when the presiding Magistrate was changed;
- iii. No actual weapon was discovered or tendered in Court to support the charge of armed robbery and the owner of the Bureau de Change mentioned on the charge sheet was never called before the court to testify;
- iv. The judgments of the trial Court and the first and second Appellate Courts were defective due to the contradiction between the evidence of Prosecution Witness 2 and Prosecution Witness 3;
- v. The Trial Court tried the case to its finality without considering or according weight to the written submissions;
- vi. The Court of Appeal relied on misconceived findings to convict them;
- vii. Their Application for Review at the Court of Appeal was dismissed on grounds that it should have been raised in an Appeal;
- viii. The sentence meted against them following their conviction is contrary to Sections 285 and 286 of the Penal Code of Tanzania as this sentence did not exist at the time the offence was committed and it was harsh."

III. Brief background of the matter

4. This Application seeks the review of the Court's judgment of 11 May 2018 in Application 005/2015 *Thobias Mang'ara and Shukurani Masegenya Mango v United Republic of Tanzania* in which it found that the Respondent State violated Article 7(1)(c) of the Charter for failure to provide the Applicants with legal assistance, with copies of some witness statements and for the delay in providing them some witness statements; and consequently that the Respondent State violated Article 1 of the Charter. The Court further found that the allegations of violations of Articles 2, 3, 5, 19 and 28 of the Charter and Articles 1, 2, 3, 5, 6 and 7 of the Universal Declaration of Human Rights in relation to their trial and conviction in the courts of the Respondent State were not established.

IV. Summary of the procedure before the Court

5. The Applicants filed the Application on 6 November 2018, and this was transmitted to their representatives, PALU, on 7 November 2018 for observations if any, to be filed within thirty (30) days of receipt thereof.
6. The Application was served on the Respondent State on 24 January 2019 for its submissions within thirty (30) days of receipt thereof.
7. On 26 February 2019, PALU requested an extension of time to make submissions in support of the Application.
8. On 5 April 2019, the Court notified PALU of the grant of its request for extension of time to file submissions in support of the Application. PALU did not file these submissions.
9. The Respondent State has not filed submissions in response to the Application.
10. Pleadings were closed on 11 June 2019 and the Parties were duly notified.

V. Applicants' Prayers

11. The Applicants pray the Court to allow their Application for review in its entirety, order their release from custody, order the Respondent State to pay them reparations for the violation of their rights and grant any other relief deemed suitable.

VI. On the conditions for review of the Judgment

12. Article 28(3) of the Protocol empowers the Court to review its decisions under conditions to be set out in its Rules. Rule 67(1) of the Rules provides that the Court may review its judgment "in the event of the discovery of evidence, which was not within the knowledge of the party at the time judgment was delivered. Such application shall be filed within six (6) months after that party acquired knowledge of the evidence so discovered". In addition, Rule 67(2) provides that "[T]he application shall specify the judgment in respect of which revision is requested, contain the information necessary to show that the conditions laid down in sub-rule 1 of this Rule have been met, and shall be accompanied by a copy of all relevant supporting documents. The application as well as the supporting documents shall be filed in the Registry".
13. The onus is thus on an Applicant to demonstrate in his application the discovery of new evidence of which he had no knowledge of at the time of the Court's judgment and the exact time when he

came to know of this evidence. The Application must be submitted within six (6) months of the time when the Applicant obtained such evidence.

14. The Court notes that the Application for Review is submitted in respect of its judgment of 11 May 2018 judgment delivered in Application 005/2015 *Thobias Mang'ara and Shukurani Masegenya Mango v United Republic of Tanzania*. The Applicants urge the Court to review that judgment on the grounds set out earlier in this judgment.
15. The Court notes that the Applicants merely restate some allegations that were considered by the Court in the said judgment.
16. The Court further notes that apart from the Applicants' allegation that the "Court of Appeal relied on misconceived findings to convict them" in respect of which they provide new information, all other grounds on which the Application is based are the same in form and substance as what they stated in their Application on the merits.
17. All the grounds that form the basis of the Application for Review, except for the claim that "the Court of Appeal relied on misconceived findings to convict them" are, restatements of some grounds of their Application on the merits. These cannot qualify as new evidence as envisaged under Rule 67(1) of the Rules.
18. The Applicants allege that the findings of the Court of Appeal which upheld their conviction and sentence were misconceived, invented and not based on existing court records.
19. The Applicants contend that the Court of Appeal's findings vary with the information contained in the record of the Trial Court. They contend that in its judgment, the Court of Appeal inferred that the second Applicant collected and put the stolen money in his bag, yet the Trial Court's record shows that it was the 5th accused in the trial, Mgendi James Edson, 'who had a bag and took all the money'.
20. They aver that the finding of the Court of Appeal that, a jacket and sunglasses which fits the description given by PW4 was found in the guest room occupied by the second Applicant was contradictory to the Trial Court's record that nothing was found in the second Applicant's room.
21. The Applicants deny any involvement in the crime and state that the finding of the Court of Appeal which inferred that there was a confession statement from the second Applicant which admits to the participation of the first Applicant, was contradictory to the Trial Court's record which notes that the second Applicant was

interrogated but he denied any involvement.

22. The Applicants allege further contradictions and state that whereas the Court of Appeal infers that the attire which the second Applicant had on during the robbery was found in his room, the Trial Court's record states that the said attire a T-shirt, was found in Wilfred Wilbard, the 3rd accused's room. They aver that the Trial Court's record had further stated that the said T-shirt was given to the 3rd accused by the 4th accused, Badru Babylon.
23. The Applicants thus conclude that premised on the above elaboration, the Respondent State's Court of Appeal upheld their conviction and sentence on 'mixed up', misapprehended and 'inverted' evidence.
24. The Court recalls that in the judgment of 11 May 2018 as regards the allegation relating to misconstrued and misapplied evidence by the national courts, it found that the Applicants had failed to establish the alleged violation due to the lack of substantiation of this claim.
25. The Court notes that though the substantiation provided in this Application for review was not in the Application on the merits, it does not qualify as new evidence that would not have been in the fore knowledge of the Applicants at the time of filing the Application on the merits. The Applicants could have substantiated on this ground while filing their Application on the merits because the record of the Trial Court and the judgment of the Court of Appeal were available to them by then and they ought to have pointed out the discrepancies.
26. The Court therefore finds that the information provided does not constitute new evidence as envisaged under Rule 67(1) of the Rules.
27. Having found that the Applicants have not filed new evidence, the Court does not deem it necessary to determine whether such information was filed within the six (6) months envisaged under Rule 67(1) of the Rules.
28. The Court consequently dismisses the Application for Review.

VII. Costs

29. The Applicants have not made any submissions on costs.
30. In terms of Rule 30 of the Rules "unless otherwise decided by the Court, each party shall bear its own costs."
31. The Court therefore rules that each Party should bear its own costs.

VIII. Operative part

32. For these reasons,
The Court,
unanimously,

- i. *Declares* that the information submitted by the Applicants does not constitute new “evidence”;
- ii. *Declares* that the Application for Review of the judgment of 11 May 2018 is inadmissible and is dismissed;
- iii. *Decides* that each Party shall bear its own costs.