

Mallya v Tanzania (striking out) (2020) 4 AfCLR 617

Application 018/2015, *Benedicto Daniel Mallya v United Republic of Tanzania*

Order (striking out), 25 September 2020. Done in English and French, the French text being authoritative.

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

Recused under Article 22: ABOUD

The Applicant, who had been convicted and was serving term for the rape of a minor, brought this action alleging that the domestic proceedings were in violation of his right to a fair trial. In a judgment on the merits, the Court found that the Respondent State had violated the Applicant's rights. No pleadings were filed on reparations as the Applicant could not be found. The Court ordered the case to be struck out.

Procedure (state consent to strike out, 18, 19)

I. The Parties

1. Mr. Benedicto Daniel Mallya (hereinafter referred to as "the Applicant") is a national of Tanzania who was convicted of the rape of a seven (7) year old girl and sentenced to life imprisonment by the District Court of Moshi, Tanzania on 16 May 2000. At the time of filing his Application, he was serving the sentence at Maweni Central Prison in Tanga, Tanzania.
2. The Application was filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"). The Respondent State 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, on 29 March 2010, it deposited the Declaration prescribed under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications from individuals and Non -Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration under Article 34(6) of the Protocol. The Court decided that the withdrawal of the Declaration would not affect matters pending before it and that the withdrawal would take effect on 22 November 2020 in conformity with its

jurisprudence.¹

II. Subject matter of the Application

A. Facts of the matter

3. The Applicant alleged that he was convicted by the District Court of Moshi, Tanzania on 16 May 2000, of the rape of a seven (7) year old girl and sentenced to life imprisonment.
4. He further alleged that he appealed to the High Court of Tanzania at Moshi. Furthermore, that since filing the Notice of Appeal, he was not provided with certified true copies of the record of proceedings and judgment of the District Court to enable him process his appeal at the High Court. He stated that he sent several letters to the District Registrar of the High Court of Tanzania at Moshi to follow up on the provision of these documents, to no avail.
5. The Applicant submitted that he filed a constitutional petition at the High Court of Tanzania seeking to enforce his constitutional rights under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, but that the process was marred by difficulties. He averred that it was only after he filed the Application before this Court that the Respondent State availed him the certified true copies of the record of proceedings and judgment in February 2016.
6. On 9 February, 2016 the High Court of Tanzania at Moshi, of its own motion, called for the Applicant's records in Criminal Appeal No. 74 of 2015. Subsequently, on 15 February 2016, it ordered a hearing of the appeal that the memorandum of appeal be served on the Applicant. According to the Respondent State, on 22 February 2016, the appeal which was not objected to by the Respondent State was considered in the Applicant's presence. During the appeal, the High Court cast doubt on the evidence relied upon by the District Court of Moshi, quashed the conviction, set aside the sentence and ordered release of the Applicant. The Applicant alleges that he was released sometime in May 2016, after serving fifteen (15) years and nine (9) months in prison.

B. Alleged violations

1 ACtHPR *Andrew Ambrose Cheusi v United Republic of Tanzania* (merits) (26 June 2020) §§ 35-39.

7. The Applicant alleged violation of his rights under the Charter, specifically, the right to have his cause heard, the right to a fair and expeditious trial and, the right to appeal under Article 7 of the Charter. Furthermore, he alleged a violation of his right to equality before the law under Article 13 (6) (a) of the Respondent State's Constitution.

III. Summary of the Procedure before the Court

8. The Application was filed before this Court on 1 September 2015, and was served on the Respondent State on 28 September 2015, in accordance with Rule 35 of the Rules.
9. The Parties filed their submissions on the merits within the time stipulated and thereafter, on 20 April 2018, they were notified of the close of pleadings.
10. On 2 October 2018, pleadings were re-opened to enable the Parties to file submissions on reparations, pursuant to the decision of the Court during its 49th Ordinary Session (16 April-11 May 2018).
11. On 4 June 2019, the Applicant's legal representative informed the Court about his inability to locate the Applicant and his family and requested for extension of the time to do so. Following this request, on 12 June, 2019, the Court granted the Applicant forty-five (45) days extension of time to file his submissions on reparations.
12. On 15 July 2019, the Applicant's representative informed the Court that he was unable to file the Applicant's submissions on reparations because he was still unable to reach the Applicant as he and his family had relocated from Moshi after the Applicant's release from detention. Furthermore, that numerous attempts were made to contact the Applicant including physical visits to his former prison and attempts to contact his relatives without success. The representative also reported that "*it is our considered opinion that the applicant no longer has interest in pursuing this matter further*" and prayed the Court to take a decision on the way forward.
13. On 1 August 2019, the Parties were notified of the close of pleadings on reparations.
14. On 26 September 2019, this Court rendered judgment on the merits in favour of the Applicant and found that the Respondent State had violated Article 7 (1) (a) of the Charter of the Applicant's rights to appeal to competent national organs. In the said judgment, the Court reserved the ruling on reparations and allowed the Parties

to file further submissions on reparations.

15. The certified copy of the judgment was transmitted to the Parties on the same day.

IV. On the striking out of the Application

16. The Court notes the pertinence of Rule 58 of the Rules which provides that:

where an Applicant notifies the Registrar of its intention not to proceed with a case, the Court shall take due note thereof, and shall strike the Application off the Court's cause list. If at the date of receipt by the Registry of the notice of the intention not to proceed with the case, the Respondent State has already taken measures to proceed with the case, its consent shall be required.

17. The Court observes in the instant case that, at the time the Registry received the letter from the Applicant's representative dated 15 July 2019, indicating the Applicant's loss of interest to pursue the matter further, the Respondent State had already quashed the Applicant's sentence, set it aside and released him from prison. The Court considers these steps are an expression of the Respondent State's will and commitment to redress the violations of the Applicant's rights using its own domestic system and to bring the matter to a close.
18. In view of the foregoing, the Court is of the view that it is not necessary to seek the consent of the Respondent State on the Applicant's notice of discontinuance. Consequently, and pursuant to Rule 58 of the Rules of Court, the Court hereby holds that the matter shall be struck out from its Cause List.

V. Operative part

19. For these reasons:

The Court,

Unanimously,

- i. Orders that Application 018/2015 *Benedicto Daniel Mallya v United Republic of Tanzania* be and is hereby struck out from the Cause List of the Court.