Jonas v Tanzania (merits) (2017) 2 AfCLR 101

Application 011/2015, *Christopher Jonas v United Republic of Tanzania*

Judgment, 28 September 2017. Done in English and French, the English text being authoritative.

Judges: ORE, KIOKO, NIYUNGEKO, GUISSE, BEN ACHOUR, BOSSA, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA and BENSAOULA

The Applicant had been convicted and sentenced to thirty years imprisonment for robbery. He brought this Application claiming a violation of his rights as a result of his detention and trial. The Court found that the evidence in the national proceedings had been evaluated in conformity with the requirements of fair trial but that the fact that the Applicant had not been granted free legal representation constituted a violation of the African Charter.

Admissibility (exhaustion of local remedies, extraordinary remedies, 44; submission within reasonable time, 50-54)

Fair trial (role of African Court in evaluation of evidence, 68; legal aid, 78)

I. The Parties

1. The Applicant, Mr Christopher Jonas, is a national of the United Republic of Tanzania, currently serving a thirty year custodial sentence at the Ukonga Prison in Dar-es-Salaam, United Republic of Tanzania.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as the "Respondent"), which became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as the "Charter") on 9 March, 1984, and 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") on 10 February, 2006. It also deposited the declaration under Article 34(6) of the Protocol, accepting the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organizations on 29 March, 2010. The Respondent has also ratified and acceded to other regional and international human rights instruments, including the International Covenant on Civil and Political Rights (hereinafter referred to as the "Covenant") on 11 July 1976.

II. Subject of the Application

3. The instant Application concerns Criminal Case No. 429 of

2002 before the District Court of Morogoro; before the High Court of Tanzania under reference Criminal Case No. 6 of 2005; and before the Court of Appeal of Tanzania sitting at Dar-es-Salaam, under reference Criminal Case No. 38 of 2006, in which the Applicant was found guilty and sentenced to thirty (30) years imprisonment for armed robbery, an offence punishable under Sections 285 and 286 of the Criminal Code, Chapter 16 of the Laws of Tanzania.

A. The facts

4. The Applicant and one Erasto Samson were jointly charged with stealing money and various items of value from one Habibu Saidi on 1 October 2002, using violence and injuring the victim in the face with a machete.

5. On 13 February 2004, the Morogoro District Court rendered its Judgment finding the Applicant and Erasto Samson guilty of the offence as charged. They were both sentenced to thirty (30) years imprisonment and twelve (12) strokes of the cane, Erasto Samson having been tried *in absentia*.

6. On 26 February 2004, the Applicant filed an Appeal before the High Court of Tanzania in Dar-es-Salaam but that Appeal was dismissed on 12 September 2005.

7. On 21 September 2005, the Applicant filed an Appeal before the Court of Appeal of Tanzania in Dar-es-Salaam. On 27 March 2009, the Appeal was similarly dismissed as regards the 30-year prison sentence. However, the Court of Appeal amended the sentence, setting aside the corporal punishment of twelve (12) strokes of the cane.

B. Alleged violations

8. The Applicant alleges:

"i. That he had been charged and wrongly convicted for armed robbery with thirty (30) year custodial sentence; that the Trial Magistrate and the Appeal Court judges grossly erred in law and fact for having taken into account the key testimony of Prosecution Witness PW1, Habibu Saidi Shomari, which evidence does not corroborate the particulars on the charge sheet, especially the list of the items allegedly stolen, their respective values and the estimated total amount;

ii. That the thirty (30) year sentence pronounced against him by the Trial Magistrate was not in force at the time the robbery was committed (1 October 2002); that Sections 285 and 286 of the Penal Code provide a maximum

punishment of fifteen(15) years imprisonment; that the thirty (30) year prison sentence came into force only in 2004 sequel to decree No. 269 of 2004, as amended and which became Section 287 A of the Penal Code;

iii. That he was denied the right to information;

iv. That he did not have the benefit of Counsel or legal assistance throughout his trial; and

v. That for all these reasons, the Respondent State violated Section 13(b)(c) of the 1977 Constitution of the United Republic of Tanzania as well as Articles 1, 2, 3, 4, 5, 6, 7(1)(c) and 7(2) of the African Charter on Human and Peoples' Rights."

III. Procedure before the Court

9. The Application was received at the Registry on 11 May 2015.

10. By a letter dated 9 June 2015, the Registry, pursuant to Rule 35(2) and (3) of the Rules of Court (hereinafter referred to as "the Rules"), transmitted the Application to the Respondent, the Chairperson of the African Union Commission and, through her, to other States Parties to the Protocol.

11. On 15 July 2015, the Respondent transmitted to the Registry the names and addresses of its representatives; and on 11 August 2015, submitted its Response to the Application.

12. On 17 August 2015, the Registry transmitted the Respondent's Response to the Applicant.

13. On the Court's directive to seek legal assistance for the Applicant, the Registry, on 6 January 2016, wrote to the Pan African Lawyers' Union (PALU), to enquire whether the latter would consider providing legal assistance to the Applicant.

14. By a letter dated 20 January 2016, PALU agreed to provide assistance to the Applicant; and on 30 March 2016, requested an extension of the time for submission of its Reply to the Respondent's Response.

15. On 29 April 2016, the Court granted PALU the extension requested, and the Parties were accordingly notified by a notice of the same date.

16. On 14 June 2016, PALU filed the Reply to the Respondent's Response which was transmitted to the Respondent for information on the same date.

17. At its 42nd Ordinary Session held from 5 to 16 September 2016, the Court, pursuant to Rule 59(1) of the Rules decided to close the written proceedings and to proceed with deliberations.

IV. Prayers of the Parties

18. In the Application, the Court is requested to:

"i. uphold all the rights flouted and violated by the Respondent State;

ii. rehabilitate the Applicant with respect to all his rights;

iii. order reparations for all the damages he suffered".

19. In his Reply to the Respondent's Response, the Applicant prays the Court to:

"i. find that the Respondent has violated his right to full equality before the law and his right to equal protection of the law as enshrined in Article 3 of the Charter;

ii. find that the Respondent has violated his right to a fair trial as enshrined in Article 7 of the Charter;

iii. set aside the guilty verdict and the punishment imposed on him and, consequently order his release from prison;

iv. issue an order for reparation;

v. order such other measures or remedies as this Honourable Court may deem appropriate".

20. In its Response to the Application, the Respondent prays the Court, with respect to its jurisdiction and the admissibility of the Application, to:

"i. Rule that the Application has not evoked (sic) the jurisdiction of the Court and should consequently be dismissed;

ii. Rule that the Application has not met the admissibility requirements stipulated under Rule 40(5) and (6) of the Rules of Court and consequently dismiss it;

iii. Rule that the Court has no jurisdiction to issue an order compelling the Respondent State to release the Applicant from detention".

21. On the merits of the case, the Respondent prays the Court to:

"i. Rule that the Government of the United Republic of Tanzania has not violated Articles 1, 2, 3, 4, 5, 6, 7(1)(c) and 7(2) of the Charter;

ii. Rule that the Government of the United Republic of Tanzania did not breach Article 13(6)(b) and (c) of the Constitution of the United Republic of Tanzania;

iii. Rule that the conviction and sentence imposed on the Applicant by the Trial Court, the High Court and the Court of Appeal of Tanzania were proper and not excessive;

iv. Rule that the thirty (30) year prison sentence for the offence of armed robbery is lawful;

v. Rule that the Government of the United Republic of Tanzania did not discriminate against the Applicant;

vi. Declare that the Government of the United Republic of Tanzania should not pay reparations to the Applicant;

vii. Dismiss the Application in its entirety for lack of merit".

V . Preliminary objections raised by the Respondent

22. In its Response to the Application, the Respondent raised preliminary objections on both the jurisdiction of the Court and the admissibility of the Application.

A. On the jurisdiction of the Court

23. In accordance with Rule 39(1) of the Rules, "the Court shall conduct preliminary examination of its jurisdiction …"

i. Objection with respect to the material jurisdiction of the Court

24. The Respondent argues that the Applicant prays the Court to sit as an appellate court or a supreme court whereas it is not within its power.

25. According to the Respondent, Article 3 of the Protocol does not provide this Court with the jurisdiction to adjudicate over matters raised by the Applicant before the national courts, revise the Judgments of these courts, evaluate the evidence and come to a conclusion

26. The Respondent maintains that the Court of Appeal of Tanzania, in its Judgment in Criminal Appeal Case No. 38/2006, examined all the allegations raised by the Applicant and that this Court (African Court) should respect the judgment of the Court of Appeal of Tanzania.

27. The Applicant for his part refutes this assertion. Citing this Court's jurisprudence in *Alex Thomas* and *Joseph Peter Chacha v United Republic of Tanzania*, the Applicant contends that this Court has jurisdiction as long as there are allegations of violation of human rights.

28. The Court reiterates its position that it is not an appeal court with

respect to the decisions rendered by the national courts.[1] However, as it underscored in its Judgment in *Alex Thomas v United Republic of Tanzania,* and *Mohamed Abubakari v United Republic of Tanzania,* this does not preclude it from ascertaining whether the procedures before national courts are in accordance with the international standards set out in the Charter or other applicable human rights instruments.[2]

29. Be that as it may, the Applicant alleges violation of the rights guaranteed by the Charter.

30. The Court therefore dismisses the objection raised by the Respondent in this regard, and holds that it has material jurisdiction.

ii. Other aspects of jurisdiction

31. The Court notes that its personal, temporal and territorial jurisdiction has not been contested by the Respondent, and nothing in the file indicates that the Court does not have jurisdiction. The Court therefore, holds that:

"i. it has jurisdiction *ratione personae* given that the Respondent is a party to the Protocol and has deposited the declaration required under Article 34(6) thereof, which enables individuals to institute cases directly before it, in terms of Article 5(3) of the Protocol.

ii. it has jurisdiction *ratione temporis* in terms of the fact that the alleged violations are continuous in nature since the Applicant remains convicted on the basis of what he considers as irregularities;[3]

iii. it has jurisdiction *rationae loci* given that the facts of the matter occurred on the territory of a State Party to the Protocol, that is, the Respondent.

32. From the foregoing, the Court concludes that it has jurisdiction and is therefore competent to hear the instant case.

B. On the admissibility of the Application

33. In terms of Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of Article

1 See *Ernest Francis Mtingwi v Republic of Malawi (*Application No. 001/2013), Judgment of 15 March 2013, para 14.

2 *Alex Thomas v United Republic of Tanzania* (Application No. 005 of 2013), Judgment of 20 November 2015, para 130 and *Mohamed Abubakari v United Republic of Tanzania* (Application No. 003 of 2012*),* Judgment of 3 June 2016*,* para 29.

3 *Zongo and Others v Burkina Faso*, preliminary objections, Judgment of 21 June 2013, paras 71 to 77.

56 of the Charter".

34. Pursuant to Rule 39 of the Rules, the Court shall conduct preliminary examination of the admissibility of the Application in accordance with Articles 50 and 56 of the Charter and Rule 40 of the Rules.

35. Rule 40 of the Rules which essentially reproduces the content of Article 56 of the Charter, provides that:

> "Pursuant to the provisions of Article 56 of the Charter to which Article 6(2) of the Protocol refers, applications to the Court shall comply with the following conditions:
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> 1. Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
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> 1. Comply with the Constitutive Act of the Union and the Charter;
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> 2. Not contain any disparaging or insulting language;
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> 3. Not based exclusively on news disseminated through the mass media;
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> 4. Be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
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> 5. Be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the Matter;
>
> 6. Not raise any Matter or issues previously settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union".

37. Whereas some of the aforementioned conditions are not in contention between the Parties, the Respondent raised objections with respect to the exhaustion of local remedies and the time frame for seizure of the Court.

i. Conditions that are in contention between the Parties

a. Objection to admissibility on grounds of failure to exhaust local remedies

38. The Respondent, relying on the jurisprudence of the

Commission,[4] contends that it is premature for the Applicant to bring the instant case before an international body given that he still has internal remedies at his disposal.

39. According to the Respondent, the Applicant first of all has the possibility of filing a constitutional petition before the High Court of Tanzania to obtain relief for the alleged violation of his rights, under the Basic Rights and Duties Enforcement Act Chapter 3 as amended in 2002 (*Basic Rights and Duties Enforcement Act [Chapter 3 Revised Edition 2002]).*

40. The Respondent maintains that after the Court of Appeal decision, the Applicant also had the possibility of requesting that same court to review its Judgment under Rule 66 of its Rules.

41. The Respondent, in conclusion, submits that since the Applicant has not exercised the aforesaid remedies available at national level, the Application does not meet the requirements set out in Rule 40(5) of the Rules and must therefore be dismissed.

42. The Applicant maintains that he has exhausted all the local remedies in filing an appeal against the Judgment of the High Court of Tanzania before the Court of Appeal of Tanzania which is the highest court in the country. He adds that since the Court of Appeal has made a ruling on his appeal, it would not be reasonable to require him to file a new application in respect of his right to a fair trial before the High Court which is a court lower than the Court of Appeal.

43. He further contends that the constitutional petition and the review remedy mentioned by the Respondent are extraordinary remedies which he was under no obligation to exhaust before filing the Application before this Court.

44. The Court notes that the Applicant appealed against his conviction before the Court of Appeal of Tanzania which is the highest judicial body in the country, and that Court upheld the Judgments of the Morogoro District Court and the High Court of Tanzania.

45. Concerning the constitutional petition and review, the Court has concluded from other matters filed against the Respondent that these are, in the Tanzanian legal system, extraordinary remedies which Applicants are not obliged to exhaust before filing their Applications in

4 Communication No. 333/06: *Southern African Human Rights NGOs Network and Others v Tanzania*; Communication No. 263/2002: *Kenyan Section of the International Commission of Jurists, Law Society of Kenya, Kituo Cha Sheria v Kenya* ; Communication No. 275/03 *Article 19 v Eritrea.*

this Court.[5]

46. The Court therefore rejects the Respondent's objection to the admissibility of the Application for failure to exhaust local remedies.

b. Objection to admissibility based on non-compliance with a reasonable time in filing the Application before the Court

47. The Respondent argues that the Applicant has not filed his Application within reasonable time. While recognising that Rule 40(6) of the Rules of Court does not prescribe a specific time frame for the submission of cases, the Respondent argues that going by the decisions of regional bodies similar to this Court, a period of six (6) months would be a reasonable time limit within which the Applicant should have filed the Application. It maintains that such was the position of the African Commission on Human and Peoples' Rights in *Michael Majuru v Zimbabwe,* and therefore avers that the period of four (4) years and 10 months in which the Applicant filed the Application is much more than the six (6) months regarded as reasonable time[6].

48. The Applicant refutes the Respondent's assertion, indicating firstly that the Application was filed on 11 May 2015, and not on 28 January 2015. He argues further that the Court's jurisprudence shows that the assessment of the reasonable time for the filing of applications is made on a case-by-case basis; that such was the Court's position in *Alex Thomas v United Republic of Tanzania*, in which the Court took into account the special situation in which the Applicant found himself, namely, that he was illiterate, indigent, incarcerated and without legal assistance, and decided that the timeframe within which the Applicant filed the Application was reasonable.

49. The Court notes that Article 56(6) of the Charter does not set a deadline within which applications should be filed.

50. Rule 40(6) of the Rules which reproduces the substance of Article 56(6) of the Charter, only speaks of a "reasonable time from the date local remedies are exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the Matter".

5 *Alex Thomas v United Republic of Tanzania* (Application No. 005/2013), Judgment of 20 November 2015, paras 60-65 ; *Mohamed Abubakari v United Republic of Tanzania* (Application No. 007/2013), Judgment of 3 June 2016, paras 65-72 ; *Wilfred Onyango v United Republic of Tanzania* (Application No. 006/2013), Judgment of 18 May 2016, para 95.

6 *Majuru v Zimbabwe* (Communication No. 308/2005) [2008] ACHPR 95 (24 November 2008).

51. The Court noes that the local remedies were exhausted on 27 March 2009, being the date on which the Court of Appeal delivered its judgment. It however also notes that as at that date, the Respondent had not deposited the declaration accepting the jurisdiction of the Court to receive cases from individuals as per Article 34(6) of the Protocol. The Court therefore holds that it would not be reasonable to regard the time frame for seizure of the Court as running from the date prior to the deposit of the said declaration, that is, 29 March 2010.

52. Since the Application was filed on 11 May 2015, the Applicant thus seized the Court in five (5) years, one (1) month and twelve (12) days. The question here is whether this time frame can be regarded as reasonable within the meaning of Article 56(6) of the Charter.

53. The Court has established in its previous Judgments that the reasonableness of the period for seizure of the Court depends on the particular circumstances of each case and must be determined on a case-by-case basis.[7]

54. In *Mohammed Abubakari v United Republic of Tanzania*, this Court held that the fact that the Applicant was incarcerated, is indigent, did not have the benefit of free assistance of a lawyer throughout the proceedings at national level, his being an illiterate and his being unaware of the existence of the Court due to its relatively recent establishment - are all circumstances that can work in favour of some measure of flexibility in determining the reasonableness of the time frame for seizure of the Court.[8]

55. Given that the Applicant in the instant case is in a situation similar to that described above, the Court finds that the period of five (5) years, one (1) month and twelve (12) days, in which it was seized is a reasonable period within the meaning of Article 56(6) of the Charter. It therefore dismisses the objection to the admissibility of the Application on the grounds of non-compliance with a reasonable period for filing the Application before the Court.

i. Conditions that are not in contention between the Parties

56. The Court notes that the issue of compliance with sub rules

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7 *Norbert Zongo and Others v Burkina Faso(*Application No. 013/2011) , Ruling on Preliminary Objections, 21 June, 2013, para 121; *Alex Thomas v United Republic of Tanzania,* (Application No. 005/2013), Judgment of 20 November 2015, para 73; *Mohamed Abubakari v United Republic of Tanzania (*Application No. 007/2013), Judgment of 3 June 2016, para 91.

8 Mohamed *Abubakari v United Republic of Tanzania,(*Application No. 007/2013)*,* Judgment of 3 June 2016 para 92.

40(1), (2), (3), (4), and (7) of the Rules is not in contention between the Parties, and nothing in the file indicates that they have not been complied with. The Court therefore holds that the admissibility requirements under those provisions have been met.

57. In light of the foregoing, the Court finds that the instant Application fulfils all the admissibility requirements under Article 56 of the Charter and Rule 40 of the Rules, and accordingly declares the same admissible.

VI. The merits

58. The Applicant alleges that the Respondent violated Articles 1, 2, 3, 4, 5, 6, 7(1)(c) and 7(2) of the Charter. The Court however notes that the Applicant made submissions only in regard to the violation of the right to fair trial.

59. In the circumstances, only the allegations substantiated by the Applicant, namely, the allegations regarding violation of Article 7 of the Charter, will be examined by the Court.

A. The allegation that the Applicant was charged and convicted on the basis of a deposition which does not corroborate the particulars on the charge sheet

60. In the Application, it is contended that the trial magistrate and the Appellate Judges grossly erred in law and in fact for having taken into account the core statement of Prosecution Witness 1 (PW1), which statement does not corroborate the particulars on the charge sheet, especially the list of the items alleged to have been stolen, their respective value and the total estimated amount.

61. The Respondent refutes this allegation, contending that following an evaluation of the evidence presented, the trial magistrate found that the theft actually took place; that probative testimonies had established that the Applicant was indeed the person who participated in the theft, and that it was on the strength of this evidence that the Applicant was convicted.

62. It further states that the Court of Appeal clearly indicated that the guilty verdict against the Applicant was not grounded on the doctrine of recent possession, but that "he was convicted because he was found, red-handed, along with other people, robbing the complainant"; that in the circumstances, it does not matter whether or not the testimony of the Prosecution Witness 1 (PW1) corroborated the content of the charge sheet as there was direct credible evidence which the Judge duly took into account.

63. The Respondent, in conclusion, submits that this allegation is

baseless and must consequently be dismissed.

64. The relevant section of Article 7(1)(c) of the Charter provides that: "Every individual shall have the right to have his cause heard..."

65. This Article may be interpreted in light of the provisions of Article 14(1) of the Covenant which provides that: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to *a fair* and public hearing by a competent, independent and impartial tribunal established by law*…." (italics added)*

66. It is evident from the above two provisions, read together, that everyone has the right to a fair trial**.**

67. The records of proceedings at national level show that the Applicant was caught red-handed committing armed robbery. The Court also notes that the national courts heard the Applicant as well as three eye witnesses, in addition to the victim; and that all declared having seen the Applicant in the act of committing the offence.

68. It is also evident from the judgement of the Court of Appeal that it examined all the pleadings by the Applicant before upholding the decision rendered by the lower courts.

69. The Court recalls that its role in regard to evaluation of the evidence on which the conviction by the national judge was grounded is limited to determining whether, generally, the manner in which the latter evaluated such evidence is in conformity with the relevant provisions of applicable international human rights instruments.[9]

70. In view of the foregoing, the Court finds that the evidence of the national courts has been evaluated in conformity with the requirements of fair trial within the meaning of Article 7 of the Charter.

71. The Court thus dismisses the Applicant's allegation that he had been charged and convicted on the basis of a single deposition which does not corroborate the particulars on the charge sheet, and holds that there was no violation of Article 7(1)(c) of the Charter in this regard.

B. The allegation that during the proceedings the Applicant was not afforded legal assistance

72. In the Application, it is alleged that the Respondent violated the Applicant's right to be represented by Counsel.

73. The Respondent argues that the Applicant has not raised this issue before the national courts. It submits that it has gone through the records of the court procedure as well as the two appeal procedures,

9 *Mohamed Abubakari v United Republic of Tanzania* (Application No. 007/2013), Judgment of 3 June 2016, para 26.

and no where did the Applicant solicit legal assistance and was denied such assistance by the certification authority.

74. The Respondent further maintains that the Applicant nonetheless has legal means to solicit legal assistance in accordance with Article 3 of the law on legal assistance (Criminal Procedure), [Chapter 21 Revised Edition 2002]; that he could have also sought such assistance during the procedure before the Court of Appeal under Rule 31(1), Part II of the 2009 Tanzania Court of Appeal Rules, but he had not availed himself of the said remedies.

75. The Applicant explains that at no time during the procedure was he informed of the possibility of obtaining free legal assistance as prescribed by law; that the Respondent had the positive obligation to notify the Applicant, *suo motu*, of the existence of such right ; that this obligation is even primordial where the individual concerned is a lay person and an indigent detainee facing a serious charge; that this is also the position of this Court in *Alex Thomas* and *Mohamed Abubakari v United Republic of Tanzania,* and that these precedents should equally apply in the instant case.

76. According to Article 7(1)(c) of the Charter,

> "Every individual shall have the right to have his cause heard. This right comprises:
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> a. …
>
> b. …
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> c. the right to defence, including the right to be defended by counsel of his choice...".

77. Article 14(3)(d) of the Covenant on its part provides that

> "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
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> a. …
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> b. …
>
> c. …
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> d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

78. In its Judgment in *Mohamed Abubakari v United Republic of Tanzania*, this Court held that "an indigent individual under prosecution for a criminal offence has the special right to free legal assistance where

the offence is serious and punishment prescribed by law severe".[10]

79. In the instant case, the Applicant being in the same situation as described above, the Court holds that the Respondent should have offered him, *proprio motu* and free of charge, the services of a lawyer throughout the judicial procedure. Having failed to do so, the Respondent violated Article 7(1)(c) of the Charter.

C. The allegation that the thirty (30) year prison sentence was not in force at the time the robbery occurred

80. In the Application, it is argued that the thirty (30) year custodial sentence imposed on the Applicant by the national courts was not in force at the time the alleged robbery with violence was committed; that Sections 285 and 286 of the Penal Code prescribed a maximum sentence of fifteen (15) years; that the thirty (30) year prison sentence came into force only in 2004, following decree No. 269 of 2004, as amended, which became Section 287 A of the Penal Code.

81. The Applicant therefore submits, from the foregoing, that the national courts violated Articles 13(b)(c) of the 1997 Constitution of the United Republic of Tanzania as well as Articles 1, 2, 3, 4, 5, 6, 7(1) (c) and 7(2) of the Charter.

82. The Respondent refutes the Applicant's allegations in their entirety. It contends that in Criminal Case No. 424/2002, the Applicant had been accused of armed robbery which is contrary to Sections 285 and 286 of the Penal Code, Chapter 16 of the Laws of Tanzania; that at the time of conviction and determination of the punishment, the Minimum Sentence Act of 1972 was in force; that, that Act was amended in 1994 by the Miscellaneous Amendment Act No. 6/1994; that the new law abrogated the 20 year imprisonment and introduced an obligatory minimum punishment of thirty (30) years.

83. The Respondent further indicates that it is not the first time the question of armed robbery offence, contrary to Sections 285 and 286 of the Penal Code Chapter 16, has emerged, as well as the punishment commensurate with this offence before 2004; that the Court of Appeal of Tanzania has made a ruling on this issue in the *Matter of William R Gerison v The Republic*, in Appeal Case No. 69/2004.

84. The Respondent submits in conclusion that the Applicant's allegations are without relevance and are baseless given that he was accused of armed robbery in 2002, whereas the minimum punishment had been amended eight (8) years earlier.

10 Judgment of 3 June 2016, para 139. See also *Alex Thomas v United Republic* of Tanzania, Judgment of 20 November 2015, para 124.

85. In his Reply, the Applicant states that he no longer intends to adduce arguments on the legality of the punishment imposed on him and that the Court may therefore consider this issue as no longer in contention between the Parties.

86. The Court notes that the Applicant abandoned this allegation. For its part, the Court has already found that thirty (30) years has been, in the United Republic of Tanzania, the minimum punishment applicable to the offense of armed robbery since 1994.[11] Consequently, it holds that the Respondent has not violated any provision of the Charter in sentencing the Applicant to this term of imprisonment.

D. The allegation that the Respondent violated Article 1 of the Charter

87. In the Application, it is alleged in general terms that the Respondent violated Article 1 of the Charter. The Respondent did not make any submission on this allegation.

88. Article 1 of the Charter provides that: "The Member States of the Organisation of African Unity, Parties to the present Charter shall recognize the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them".

89. The Court has found that the Respondent violated Article 7(1)(c) of the Charter for failing to avail the Applicant with free legal assistance. It therefore reiterates its decision in *Alex Thomas v the United Republic of Tanzania.* In that Matter, the Court noted that "…when the Court finds that any of the rights, duties and freedoms set out in the Charter are curtailed, violated or not being achieved, this necessarily means that the obligation set out under Article 1 of the Charter has not been complied with and has been violated."[12]

90. Having established that the Applicant was denied his right to free legal assistance, in violation of Article 7(1)(c) of the Charter, the Court finds that the Respondent consequently violated its obligation under Article 1 of the Charter.

11 *Mohamed Abubakari v United Republic of Tanzania (*Application No. 007/ 2013), Judgment of 3 June 2016, para 210.

12 *Alex Thomas v United Republic of Tanzania (*Application No. 005/2013*),* Judgement of 20 November, 2015, para 135.

VII. Reparations

91. In the Application, the Court is requested to: (i) restore the Applicant's rights, (ii) annul the guilty verdict and the punishment imposed on him, (iii) order his release from detention, and (iv) order that reparations be made for all the human rights violations established.
92. In its Response, the Respondent prays the Court to dismiss the Application in its entirety for being groundless, and therefore rule that the Applicant is not entitled to reparations.
93. 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."
94. In this respect, Rule 63 of the Rules provides that "the Court shall rule on the request for the reparation by the same decision establishing the violation of a human and people's rights, or if the circumstances so require, by a separate decision".
95. As regards the Applicant's prayer to be set free, the Court has established that such a measure could be directly ordered by the Court only in exceptional and compelling circumstances[13]. In the instant case, the Applicant has not provided proof of such circumstances. Consequently, the Court dismisses the prayer.
96. The Court however notes that such finding does not preclude the Respondent from considering such measure on its own.
97. On the request to annul the conviction and sentence against the Applicant, the Court notes that it does not have the power to annul Decisions rendered by national courts. It therefore dismisses that request.
98. The Court finally notes that none of the Parties made submissions on the other forms of reparations. It will therefore make a ruling on this question at a later stage of the procedure after having heard the Parties.

VIII. Costs

99. In terms of Rule 30 of the Rules "unless otherwise decided by the Court, each party shall bear its own costs."
100. Having considered the circumstances of this matter, the Court decides that each party should bear its own costs

13 *Alex Thomas v United Republic of Tanzania (*Application No. 005/2013*)*, Judgment of 20 November 2015, para 157; Mohamed *Abubakari v United Republic of Tanzania* (Application No. 007/2013), Judgment of 3 June 2016, para 234.

101. For these reasons:
The Court
Unanimously:
i. *Dismisses* the objection to the jurisdiction of the Court raised by the Respondent;
ii. *Declares* that it has jurisdiction to hear the instant Application;
iii. *Dismisses* the objection on the admissibility of the Application raised by the Respondent;
iv. *Declares* the Application admissible
v. *Holds* that the Respondent has not violated Article 7(1) of the Charter in terms of the Applicant's allegations that he was charged and convicted on the basis of a deposition which does not corroborate the particulars on the charge sheet and that the 30 year prison sentence was not in force at the time the offence was committed;
vi. *Holds* that the Respondent violated Article 7(1)(c) of the Charter in terms of the Applicant's allegation that he did not have the benefit of free legal assistance**,** and that, consequently, the Respondent also violated Article 1 of the Charter;
vii. *Dismisses* the Applicant's prayer for the Court to directly order his release from prison without prejudice to the Respondent applying such measure *proprio motu*;
viii. *Dismisses* the Applicant's prayer for the Court to set aside his conviction and sentence without prejudice to the Respondent applying such measure *proprio motu.*
ix. *Reserves* its ruling on the Applicant's prayer on other forms of reparation measures;
x. *Requests* the Applicant to submit to the Court his Brief on other forms of Reparations within thirty days of receipt of this Judgment; also requests the Respondent to submit to the Court its Response on Reparations within thirty days of receipt of the Applicant's Brief;
xi. *Rules* that each Party shall bear its own costs.