Ramadhani v Tanzania (merits) (2018) 2 AfCLR 344

Application 10/2015, *Amiri Ramadhani v United Republic of Tanzania*

Judgment, 11 May 2018. Done in English and French, the English text being authoritative.

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

The Applicant had been convicted and sentenced for robbery of a motor vehicle, attempted suicide and for inflicting grievious bodily harm on his person. He brought this Application claiming a violation of his rights as a result of his detention and trial. The Court found that the Applicant's fair trial guarantees had been violated.

Jurisdiction (conformity of domestic proceedings with Charter, 24)

Admissibility (exhaustion of local remedies, extraordinary remedy, 39; submission within reasonable time, 50)

Fair trial (free legal representation, 68, 69)

Reparations (not appellate court, 84; release an exceptional remedy, 85)

I. The Parties

1. The Applicant, Mr Amiri Ramadhani (herein-after referred to as the "Applicant") is a national of the United Republic of Tanzania who is serving a thirty (30) year sentence in Ukonga Central Prison in Dar es Salaam for armed robbery, attempted suicide and for inflicting grievious bodily harm on his person.

2. The Application is filed against the United Republic of Tanzania (herein-after referred to as the "Respondent State") which became a Party to the African Charter on Human and Peoples' Rights (herein-after referred to as the "Charter") on 21 October 1986, and to the Protocol to the African Charter on Human and Peoples' Rights (herein-after referred to as the "Protocol") on 10 February 2006. Furthermore, the Respondent State on 29 March 2010, deposited the Declaration prescribed in Article 34(6) of the Protocol accepting the jurisdiction of the Court.

II. Subject of the Application

A. Facts of the matter

3. The Applicant alleges that he was charged on 2 March 1998

with the offence of robbery of a vehicle, attempted suicide and inflicting serious bodily harm on his person in Criminal Case No. 199/98 before the Arusha District Court; On 25 August 1999, the Applicant was convicted and sentenced to thirty (30) years' imprisonment for armed robbery, an offense punishable under Sections 285 and 286 of the Penal Code, Chapter 16 of the Laws of Tanzania; 7 years for attempted suicide under Section 217 of the same Code; and 2 years for causing grievous bodily harm under Section 225 of this Code.

4. On 28 August 1999, the Applicant appealed the Judgment rendered by the Arusha District Court before the High Court of Tanzania in Criminal Case No. 64/2000 and on 22 September 2005, the High Court upheld the 30 years imprisonment sentence set aside the 7 years imprisonment sentence for attempted suicide by reducing the same to 2 years, and dismissed all the other counts.

5. On 25 September 2005, the Applicant filed Criminal Appleal No. 228/2005 before the Court of Appeal of Tanzania sitting in Arusha. By a Judgment of 29 October 2007, the Court of Appeal dismissed this appeal and upheld the sentence of thirty (30) years imprisonment.

B. Alleged violations

6. The Applicant made several complaints in relation to the manner of his detention, trial and sentencing by the Respondent State's judicial authorities. He specifically complains about the following:

"i. Having been accused on the basis of the biased acts of a Police Officer who, acting for and on behalf of the Criminal Investigation Department (CID), obtained and registered the Applicant's statement in a manner contrary to the established procedure;

ii. Having been detained in contravention of the provisions of Sections 50 and 51 of the Criminal Procedure Act;

iii. Having been sentenced on the basis of an error in law and in fact for having taken into account the so-called testimony of a prosecution witness;

iv. The excessive nature of the 30 years prison sentence pronounced by the Court of First Instance contrary to the maximum sentence of 15 years set forth in Sections 285 and 286 of the Penal Code;

v. Having been sentenced in violation of Section 13 (b) (c) of the 1977 Constitution of the United Republic of Tanzania and contrary to the African Charter on Human and Peoples' Rights;

vi. That the Appellate Courts failed to take note that the

30 years prison sentence was excessive and was not applicable at the time the facts occurred;

vii. Having not received the assistance of a lawyer as well as legal aid;

viii. Having thus been discriminated against."

7. That in light of the foregoing, the Applicant submits that the Respondent State has violated Article 13(b)(c) of the Constitution of the United Republic of Tanzania, as well as Articles 1, 2, 3, 4, 6 and 7(c) and (2) of the African Charter on Human and Peoples' Rights.

III. Summary of the procedure before the Court

8. The Registry received the Application on 11 May 2015 and acknowledged receipt thereof on 5 June 2015.

9. By a notice dated 9 June 2015 the Registry, pursuant to Rules 35(2) and 35(3) of the Rules of Court (herein-after referred to as the "Rules"), served the Application on the Respondent State, and transmitted the same to the Chairperson of the African Union Commission and, through her, to all the other States Parties to the Protocol.

10. By a letter dated 14 August 2015 received at the Registry on 18 August 2015 the Respondent State filed its Response.

11. Following the directive of the Court, the Registry requested the Pan African Lawyers Union (PALU) to provide legal assistance to the Applicant. On 20 January 2016 PALU accepted to assist the Applicant and the Parties were notified accordingly. On 29 January 2016 the Registry forwarded to PALU all the relevant documents on the Matter to enable the latter file a Reply to the Response. On 30 May 2016 the Registry informed PALU that the Court had, *proprio motu,* granted it an extension of thirty (30) days within which to file the Reply.

12. On 27 June 2016 PALU filed its Reply which was transmitted to the Respondent State by a notice dated 28 June 2016.

13. On 14 September 2016, the Court decided that the written procedure is closed, and the Parties were notified accordingly.

IV. Prayers of the Parties

14. The Applicant's prayers as contained in the Application are as follows:

"i. Facilitate him with free legal representation or legal aid under Rule 31 of the Rules of Court and Article 10(2) of the Protocol;

ii. Declare the Application admissible and give effect thereto

by invoking the admissibility conditions prescribed in Article 56 of the Charter, Article 6(2) of the Protocol and Rule 40 of the Rules of Court;

iii. Declare that the Respondent State has violated the Applicant's rights guaranteed by Articles 1, 2, 3, 4, 5, 6, and 7(c) and (2) of the Charter;

iv. Consequently, issue an order compelling the Respondent State to set free the Applicant;

v. Issue an order for reparations by virtue of Article 27(1) of the Protocol and Rule 34(5) of the Rules, and such other order or measure as the Court may deem appropriate. should this Honourable Court find merit in the Application and in the prayers sought;

vi. Quash the conviction for armed robbery, the punishment inflicted and release the Applicant from prison."

15. In the Reply to the Respondent State's Response, the Applicant reiterated his prayers, and sought the following orders from the Court:

"A declaration that the Application is admissible and that the Court has jurisdiction to hear the case on the merits as *per* Articles 3(2) of the Protocol and Rules 26(2) and 40(6) of its Rules;

A declaration that the Respondent State has violated the Applicant's right to a fair trial as protected by the Charter under Article 7 on at least two grounds:

(i) failure to provide the Applicant with legal assistance;

(ii) convicting the Applicant on the sole basis of a statement under caution that was uncorroborated and which the Applicant had in any case withdrawn."

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

"i. Hold that the Application has not invoked the jurisdiction of this Honourable Court;

ii. Dismiss the Application for non-compliance with the admissibility conditions stipulated under Rule 40(5) of the Rules."

17. With respect to the merits of the Application, the Respondent State prays the Court to rule that it has not violated Articles 1, 2, 3, 4, 5, 6, 7 (1)(c) and 7(2) of the Charter.

18. The Respondent State therefore prays the Court to dismiss the Application for lack of merit, as well as the Applicant's request for reparations and rule that the Applicant should continue to serve his

prison sentence.

V. Jurisdiction

19. Pursuant to Rule 39(1) of its Rules, the Court "shall conduct preliminary examination of its jurisdiction…."

A. Objection on material jurisdiction

20. The Respondent State submits that the Applicant requires this Court to act as an Appeal Court or Supreme Court, whereas it does not have the power to do so.
21. According to the Respondent State, Article 3 of the Protocol does not give the Court the latitude to adjudicate on issues that have not been raised by the Applicant before the national courts, review judgments rendered by the said courts, reassess the evidence and make a finding.
22. The Respondent State asserts that in its judgment in Criminal Case No. 228/2005, the Court of Appeal of Tanzania examined all the allegations made by the Applicantand that this Court is bound to respect the Judgment rendered by that Court.
23. The Applicant refutes this assertion. Citing the Court's jurisprudence, particularly in *Alex Thomas v United Republic of Tanzania* and *Peter Joseph Chacha v United Republic of Tanzania*, he submits that the Court has jurisdiction as long as the allegations made are in respect of human rights violations.
24. The Court reiterates its position, that it is not an appellate body with respect to the decisions of national courts.[1] As the Court had emphasised in its 20 November 2015 Judgment in *Alex Thomas v United Republic of Tanzania,* it held that: *"*though this Court is not an appellate body with respect to decisions of national courts this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned".[2] In the instant case, the Court's

1 Application No.005/2013, Judgment of 20/11/2015, *Alex Thomas v United Republic of Tanzania (Alex Thomas v Tanzania* Judgment), para 130; Application No. 010/2015, Judgment of 28/09/2017, *Christopher Jonas v United Republic of Tanzania (Christopher Jonas v Tanzania* Judgment*),* para 28; Application No. 003/2014, Judgment of 24/11/2017, *Ingabire Victoire Umuhoza v Republic of Rwanda (Ingabire Victoire v Rwanda* Judgment*),* para 52; Application No. 007/2013, Judgment of 03/06/2013, *Mohamed Abubakari v United Republic of Tanzania (Mohamed Abubakari v Tanzania* Judgment*)*, para 29.

2 *Alex Thomas v Tanzania Judgment op cit* para 130.

jurisdiction cannot be contested as long as "the rights allegedly violated are protected by the Charter or any other human rights instruments ratified by the Respondent State."[3]

25. In any case, the Applicant has alleged violations of the rights guaranteed by the Charter. Accordingly, the Court dismisses the Respondent State's objection in this regard and holds that it has material jurisdiction.

B. Other aspects of jurisdiction

26. The Court notes that its personal, temporal and territorial jurisdiction is not contested by the Respondent State, and that nothing on record indicates that the Court lacks jurisdiction. It therefore holds:

i. that it has personal jurisdiction, given that the Respondent State is a Party to the Protocol and has deposited the Declaration prescribed under Article 34(6) allowing individuals to bring applications directly to the Court, pursuant to Article 5(3) of the Protocol (*supra,* paragraph 2);

ii. that it has temporal jurisdiction insofar as the alleged violations are of a continuing nature, since the Applicant is still convicted for what he considers to be defects;[4]

iii. that it has territorial jurisdiction insofar as the facts occurred in the territory of the Respondent State, a State Party to the Protocol.

27. In light of the foregoing considerations, the Court holds in conclusion that it has jurisdiction to hear the case.

VI. Admissibility of the Application

28. 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 56 of the Charter".

29. Pursuant to Rule 39(1) of the Rules, "The Court shall conduct preliminary examination of … the admisibility of the Application in accordance with Article… 56 of the Charter and Rule 40 of these Rules".

30. Rule 40 of the Rules, which in substance restates the provisions

3 *Ibid* para 45.

4 Application No. 011/2013, Ruling of 21/06/2013, (Preliminary Objections), *Beneficiaries of the late Norbert Zongo and Others v Burkina Faso (Norbert Zongo v Burkina Faso Ruling*), paras 71 to 77.

of Article 56 of the Charter, provides as follows:

> "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:
>
> 1. Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> 2. Comply with the Constitutive Act of the Union and the Charter;
> 3. Not contain any disparaging or insulting language;
> 4. Not be based exclusively on news disseminated through the mass media;
> 5. Be filed after exhausting local remedies, if any, unless it is obvious that the procedure is unduly prolonged;
> 6. 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;
> 7. 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."

A. Conditions of admissibility in contention between the Parties

31. The Respondent State raises two objections regarding the exhaustion of local remedies and the timeframe for seizure of the Court.

i. Objection based on alleged non-exhaustion of local remedies

32. In its Response, the Respondent State argues that the Application has not complied with the admissibility conditions prescribed under Article 56(5) of the Charter and Rule 40(5) of the Rules and that it has not been filed within a reasonable time after local remedies were exhausted.

33. The Respondent State further argues that with regard to the alleged violation of the rights enshrined in the Bill of Rights, Part III, Articles 12 to 29 of the Constitution of the United Republic of Tanzania, as in this case, the Applicant has the possibility to file a Constitutional Petition before the High Court of Tanzania orrequest a review of the decision of the Court of Appeal in accordance with Rule 65 of that Court's Rules.

34. The Respondent State argues in conclusion that the Applicant's

refusal to exercise the available and effective remedies, especially the Constitutional Petition, the review remedy and the request for legal assistance, all constitute tangible proof that the Applicant has not exhausted local remedies and that the Application should therefore be dismissed for non-compliance with the provisions of Rule 40(5) of the Rules.

35. The Applicant, in his Reply, does not contest the existence of the remedies invoked by the Respondent State but rather whether he was required to exhaust them. He argues that the remedies have been exhausted in as far as the Court of Appeal, the highest Court in the United Republic of Tanzania, delivered a Judgment in Criminal Case No. 228/2005, following his appeal.

36. With regard to the constitutional petition remedy and the review remedy, the Applicant alleges that these are "extraordinary remedies" which are not required to be pursued for the purposes of seeking redress before this Court.

37. Consequently, the Applicant argues that he has exhausted all the available local remedies and that the Application meets the admissibility condition set out in Rule 40(5) of the Rules of Court.

38. With regard to local remedies, the Court notes that it has been established that the Applicant filed an appeal against his conviction before the Court of Appeal of Tanzania, the highest judicial organ of the country, and that this Court upheld the judgments of the High Court and the District Court.

39. The key question is whether the two other remedies mentioned by the Respondent State, namely, the Constitutional Petition before the High Court and the Review before the Court of Appeal are remedies that must be exhausted by the Applicant within the meaning of Rule 40(5) of the Rules which in essence restates the provisions of Article 56(5) of the Charter. Regarding the filing of a Constitutional Petition on the violation of the Applicant's rights, the Court has already stated that this remedy in the Tanzanian judicial system is an extraordinary remedy that the Applicant is not required to exhaust prior to seizing this Court.[5] Similarly for the Application for Review.[6]

40. It is therefore clear that the Applicant has exhausted all the available ordinary remedies that he was required to exhaust. For this reason, the Court dismisses the objection based on the non-exhaustion of all local remedies proposed by the Respondent State.

5 *Alex Thomas v Tanzania Judgment* paras 65; *Mohamed Abubakari v Tanzania* Judgment *op cit* paras 66-70; Application No.011/2015. Judgment of 28/09/2017, *Christopher Jonas v United Republic of Tanzania. (Christopher Jonas v Tanzania Judgment)* para 44.

6 *Alex Thomas v Tanzania* Judgment para 63.

ii. Objection based on alleged non-compliance with a reasonable time

41. The Respondent State submits that the Applicant filed this Application five (5) years and two (2) months, after the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol.

42. The Respondent State maintains that the Application is inadmissible on the grounds that it has not complied with the conditions of admissibility envisaged in Rule 40(6) of the Rules.

43. The Respondent State relying on the jurisprudence of the African Commission on Human and Peoples' Rights in *Majuru v Zimbabwe,*[7] maintains that six (6) months is a reasonable period within which the Application should have been filed.

44. In his Reply, the Applicant refutes the Respondent State's allegations on reasonable time and argues that the Declaration filed under Article 34(6) of the Protocol was deposited thirty (30) months after the Court of Appeal's Judgment in Criminal Case No. 228/2005. The Applicant adds that, at that time, he was already incarcerated following his conviction and moreover, he had no access to information.

45. The Applicant asserts that, in the circumstances, the Application was filed within a reasonable time as envisaged by Article 56(6) of the Charter and Rule 40(6) of the Rules and he prays that the Court should refer to its own jurisprudence which requires that compliance with this requirement should be determined on a case-by-case basis.

46. The Applicant further contends that, in the circumstances, it was difficult for him being a lay person with regard to judicial matters to be aware that new remedies which were hitherto unavailable were now possible.

47. Lastly, the Applicant submits that, if the Court dismisses his Application on the ground that it should have been filed earlier than was the case, this would amount to a flagrant injustice and a continuing violation of the rights set forth in Articles 6 and 7 of the Charter, given that he is still in prison.

48. The Court notes that Article 56(6) of the Charter does not specify any time frame within which a case must be filed before this Court. Rule 40(6) of the Rules, which, in substance, restates Article 56(6) of the Charter, simply mentions "a reasonable time from the date local remedies were exhausted orfrom the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter."

7 *Michael Majuru v Zimbabwe* (2008) AHRLR 146 (ACHPR 2008).

49. Local remedies were exhausted on 20 October 2007 when the Court of Appeal delivered the judgment. However, it was only on 29 March 2010 that the Respondent State filed the Declaration under Article 34(6) of the Protocol allowing individuals such as the Applicant to file applications before this Court. Therefore, this is the date from which time should be reckoned regarding the assessment of reasonableness as envisaged in Rule 40(6) of the Rules. The Application was filed five (5) years, one (1) month, one (1) week and six (6) days after the Respondent State filed the aforementioned Declaration. On this issue, the Court recalls its jurisprudence in *Norbert Zongo and Others v. Burkina Faso* in which it held that: "the Court finds that the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis".[8]

50. In the instant case, the fact that the Applicant is in prison, restricted in his movements and with limited access to information; the fact that he is indigent and unable to pay a lawyer; the fact that he did not have free assistance of a lawyer since March 1998; and may not have been aware of the existence of this Court before filing the Application- all justify some flexibility in determining the reasonableness of the time for filing this Application. In view of the foregoing, the Court finds that the Applicaiton has complied with the requirement of filing the Application within a reasonable time.

51. Accordingly, the Court dismisses the objection relating to the non-compliance with the requirement of filing the Application within a reasonable time and consequently finds Application admissible.

B. Conditions of admissibility not in contention between the Parties

52. The conditions in respect of the identity of the Applicant, incompatibility with the Constitutive Act of the African Union and the Charter, the language used in the Application, the nature of the evidence and the principle that an application must not raise any matter already determined in accordance with the principles of the United Nations Charter, the Constitutive Act of the African Union, the provisions of the Charter or of any other legal instruments of the African Union (Sub-Rules 1, 2, 3, 4 and 7 of Rule 40 of the Rules), are not in contention between the Parties. The Court notes that nothing on record indicates that any of these conditions has not been fulfilled in this case.

8 *Alex Thomas v Tanzania* Judgment *op cit,* para 73; *Zongo and Others v Burkina Faso* Judgment o*p cit* para 121.

53. In light of the foregoing, the Court finds that this Application meets all the admissibility conditions set out in Article 56 of the Charter and Rule 40 of the Rules and declares the Application admissible.

VII. The merits

54. The Applicant alleges that the Respondent State has violated Articles 1, 2, 3, 4, 5, 6, 7(1)(c) and 7(2) of the Charter. The Court however notes that the Applicant dwelt only on violations of Articles 1 and 7 of the Charter which relate to rights, duties and freedoms, and the right to a fair trial, which this Court will now examine.

A. Alleged violations of the right to a fair trial

55. The Applicant raises several claims that relate to the alleged violation of the right to a fair trial which reads as follows:

> "1. Every individual shall have the right to have his cause heard. This comprises:
>
> a. the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
>
> b. the right to be presumed innocent until proved guilty by a competent court or tribunal;
>
> c. the right to defense, including the right to be defended by counsel of his choice;
>
> d. the right to be tried within a reasonable time by an impartial court or tribunal.
>
> 2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender."

i. Allegation relating to the defective charge sheet

56. The Applicant complains of procedural defects relating to the Charge Sheet arguing that the courts relied on the statement contained in the "statement under caution*,"* tendered as *Exhibit P1.* which he contests, alleging that it was obtained contrary to Sections 50 and 51 of the Criminal Procedure Act and, consequently, that the charge sheet was defective.

57. The Applicant further argues that where an accused contradicts his statements *ab initio,* the Court must determine the voluntary nature

of the said statements prior to admitting them in evidence. He avers that reliance on the statements contested by the Applicant to justify a conviction constitutes a violation of the principle of presumption of innocence set out in Article 7(1)(b) of the Charter.

58. The Respondent State disputes the Applicant's allegations, pointing out that the Applicant should provide proof to support his claim. According to the Respondent State, the statements made by the Applicant while in detention were compliant with the Criminal Procedure Act Chapter 20 of the Laws of Tanzania and their evidentiary value has been legally admitted and corroborated in accordance with the law of evidence.

59. The Court notes that the record before it shows that the Applicant contested his indictment at the High Court.

60. The Court finds, however, that the Applicant claims that there were procedural defects during his interrogation but does not satisfactorily explain how and whether these irregularities vitiated the decicion against him.

61. For the above reasons, the Court relying on the record, holds that the allegation in respect of irregularities in the charge sheet is not established.

ii. The allegation relating to an error in law with regard to the testimony of Prosecution Witness 1

62. The Applicant alleges that the Trial Judge and the Appelate Judges relied on the statements of Prosecution Witness 1 (PW1) obtained by a police officer acting in lieu of a Criminal Investigation Police Officer who showed up at the crime scene for the purpose of investigation, in breach of the procedure in this respect.

63. The Respondent disputes these allegations and submits that the Applicant has not provided irrefutable proof.

64. It is apparent from the record on file and, more specifically, from a reading of the three judgments delivered by the national courts that the Applicant's guilt was based not only on the statement of witness PW1, but also on witnesses PW2, PW3 and PW4, and at no point in the proceedings was the allegation regarding the annulment of the proceedings in relation to prosecution evidence PW1 raised. The Court further notes that the Applicant has not provided proof of this allegation.

65. The Court holds in conclusion that the allegation regarding procedural error relating to the statement of the prosecution witness PW1 is unfounded**.**

iii. The allegation relating to the lack of legal assistance

66. The Applicant alleges that he is indigent and that he received no legal assistance throughout the procedure which culminated in his conviction, whereas such assistance was imperative in view of the seriousness of the offen**c**e with which he was charged. He infers therefrom that the lack of free legal assistance has led to violation of his right to a fair trial guaranteed under Article 7 of the Charter.

67. **T**he Respondent State claims that The Legal Aid (Criminal Proceedings) Act, of 1 July 1969 as amended in 2002, provides for free legal aid in criminal proceedings involving indigent persons under certain conditions, including a request for that purpose. The Respondent State claims that the records indicate that the Applicant never made such a request to the national courts, and therefore that his claim in this regard is unfounded and must be dismissed.

68. The Court has previously held in the Matter of *Mohamed Abubakari v United Republic of Tanzania* that "an indigent person under prosecution for a criminal offence is particularly entitled to free legal assistance where the offence is serious, and the penalty provided by law is severe".[9]

69. The Applicant, in the instant case, being in the same situation as described above, the Court finds that the Respondent State was under an obligation to provide him, automatically and free of charge, the services of a lawyer throughout the judicial proceedings in the domestic courts. Having failed to do so, the Respondent State violated Article 7(1)(c) of the Charter.

iv. The allegation that the thirty years prison sentence was not in force at the time the facts occured

70. The Applicant submits that the thirty (30) years prison sentence pronounced by the Trial Court against him was excessive in terms of Sections 285 and 286 of the Penal Code which prescribes a maximum sentence of fifteen (15) years; and therefore that his conviction contravened the Constitution of the United Republic of Tanzania. He further submits that the 30 years prison sentence introduced and published by the Official Gazette No. 269 of 2004 in its Section 287 A, was not applicable at the time the facts occurred.

71. The Respondent State contests the above allegations, submitting that it lies with the Applicant to prove it. According to the Respondent State, the punishment applicable to the offence of armed

9 *Mohamed Abubakari v Tanzania* Judgment o*p cit* paras 138-142.

robbery under the Minimum Sentences Act as amended, is a custodial sentence of at least 30 (thirty) years. It states in conclusion that the punishment for armed robbery handed down by the Trial Court in Criminal Case No. 199/1998 was consistent with the Penal Code, the Minimum Sentences Act and Article 13(6)(a) of the Constitution of the United Republic of Tanzania (1977).

72. The Court notes that the issue for determination is whether or not the sentence meted out on the Applicant in 1999 and upheld by the Court of Appeal in 2006 and 2007, is in breach of the law.

73. The Court has already noted that thirty (30) years prison sentence has been, since 1994 the minimum punishment applicable to armed robbery in the United Republic of Tanzania.[10] In this case, the records show that in March 1998, the law applicable at the time the offence in question (armed robbery) was committed is the Tanzanian Penal Code of 1981 and the Minimum Sentences Act of 1972 as amended in 1989 and in 1994; and, consequently, the Applicant's allegation is unfounded.

74. The Court therefore holds that the allegation of a violation with regard to the punishment imposed on the Applicant following his conviction for armed robbery is unfounded and, as such, dismisses the allegation.

B. The allegation regarding the violation of Article 1 of the Charter

75. In the Application, it is alleged that the Respondent State has violated Article 1 of the Charter. The Respondent State, for its part, contends that all the rights of the Applicant have been respected.

76. Article 1 of the Charter provides that:

> "The Member States of the Organisation of African Unity, Parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them".

77. The Court has already found that the Respondent State has violated Article 7(1) (c) of the Charter for having failed to provide the Applicant with legal assistance. Consequently, the Court reiterates its finding in *Alex Thomas v United Republic of Tanzania,* 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

10 *Mohamed Abubakari v Tanzania* Judgment *op cit* para 210.

been complied with and has been violated."[11]

78. After having found that the Applicant was deprived of his right to free legal assistance in violation of Article 7(1)(c) of the Charter, the Court holds that the Respondent State had simultaneously violated its obligation under Article 1 of the Charter.

VIII. Remedies sought

79. As indicated in paragraph 16 of this Judgment, the Applicant prays, *inter alia,* that the Court set aside his conviction, release him from prison and order that reparation measures be taken.

80. As indicated in paragraph 19 above the Respondent State requests that the Application be dismissed in its entirety for lack of merit and that accordingly, the Applicant should not be granted reparation.

81. Article 27(1) of the Protocol provides that "if the Court finds that there has been a violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

82. In this respect, Rule 63 of the Rules stipulates that "the Court shall rule on the request for the reparation … by the same decision establishing the violation of a human and peoples' right or, if the circumstances so require, by a separate decision."

83. The Court recalls its position on State responsibility in *Reverend Christopher R. Mtikila v United Republic of Tanzania*, that "any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation."[12]

84. As regards the prayer to quash the Applicant's conviction and sentencing, the Court reiterates its decision that it is not an appellate Courts with powers to overturn the decisions of national courts, therefore it declines to grant this prayer.[13]

85. 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.[14] In the instant case, the Applicant has not set out such circumstances. Accordingly, the Court dismisses this prayer.

86. The Court notes, however, that its decision does not prevent the

11 *Alex Thomas v Tanzania* Judgment, *op cit* para 135.

12 Application No. 011/2011 Ruling of 13/06/2014, *Reverend Christopher R Mtikila v United Republic of Tanzania,* para 27.

13 Application No.032/2015 Judgment of 23/03/2018, *Kijiji Isiaga v United Republic of Tanzania* para 95.

14 *Alex Thomas v Tanzania* Judgment *op.cit*, para 157; *Mohamed Abubakari v Tanzania Judgment op cit,* para 234.

Respondent State from taking such a measure, itself.

87. The Court, lastly, notes that the Parties did not file submissions regarding other forms of reparation. Hence, the Court shall rule on this issue at a later stage of the proceedings, after hearing the Parties.

IX. Costs

88. Pursuant to Rule 30 of the Rules "unless otherwise decided by the Court, each party shall bear its own costs".

89. The Court notes that none of the Parties made prayers as to Costs.

90. Considering the circumstances of this matter, the Court decides that each Party shall bear its own costs.

X. Operative part

91. For these reasons,

The Court,

unanimously

On jurisdiction:

i. *Dismisses* the objection to the jurisdiction of the Court;

ii. *Declares* that it has jurisdiction;

On admissibility:

iii. *Dismisses* the objections on admissibility of the Application;

iv. *Declares* the Application admissible;

On the merits:

v. *Finds* that the alleged violation of Article 7relating to irregularities in the Charge Sheet has not been established;

vi. *Finds* that the Respondent State has not violated Article 7(1)(b) of the Charter as regards the Applicant's allegation on procedural error in respect of the statement of PW 1;

vii. *Finds* that the Respondent State has not violated Article 7(2) of the Charter as regards the applicability of the sentence at the time the robbery was committed;

viii. *Finds* however, that the Respondent State has violated Article 7(1)(c) of the Charter as regards the failure to provide the Applicant with free legal assistance during the judicial proceedings; and consequently, *finds* that the Respondent State has also violated Article 1 of the Charter;

ix. *Does not grant* the Applicant's prayer for the Court to quash his conviction and sentence.

x. *Does not grant* the Applicant's prayer for the Court to directly order his release from prison, without prejudice to the Respondent State applying such a measure *proprio motu*;

xi. *Reserves* its decision on the Applicant's prayer on other forms of reparation:

xii. *Decides* that each Party bear its own Costs;

xiii. Allows the Applicant, in accordance with Rule 63 of its Rules, to file his written submissions on the other forms of reparation within thirty (30) days from the date of notification of this Judgment; and the Respondent State to file its Response within thirty (30) days from the date of receipt of the Applicants' written submissions.