Malengo v Tanzania (review judgment) (2020) 4 AfCLR 506

Application 001/2019, *Ramadhani Issa Malengo v United Republic of Tanzania*

Judgment (application for review) 15 July 2020. Done in English and French, the English text being authoritative.

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

Recused under Article 22: ABOUD

In an earlier ruling on this matter, the Court held that the Applicant had not exhausted local remedies and accordingly declared the action inadmissible. Citing new evidence, this application sought a review of the earlier ruling. The Court dismissed the application.

Jurisdiction (review jurisdiction, 15, 16)

Admissibility (new evidence, 24, 27,29)

I. The Parties

1. Mr. Ramadhani Issa Malengo (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania and a tobacco farmer. He resides in Kigwa village, Tabora region.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which became 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. On 29 March 2010, it also deposited the Declaration under Article 34(6) of the Protocol, through which it accepted the jurisdiction of the Court to receive cases 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. The withdrawal will take effect on 22 November 2020 and thus has no bearing on this instant Application.[1]

II. Subject of the Application

1 *Andrew Ambrose Cheusi v United Republic of Tanzania*, AfCHPR, Application 004/2015, Judgment of 26 June 2020 (merits and reparations) §§ 35-39.

3. On 4 December 2019, the Applicant filed an Application for Review of the Court's Ruling of 4 July 2019 in the matter of *Ramadhani Issa Malengo v United Republic of Tanzania* (hereinafter referred to as "Ruling").

4. In this regard, the Applicant submits that the Court erred in its ruling that he had not exhausted local remedies and avers that he did so through Civil Case No.163 of 2000 decided by the High Court and Civil Cases No. 108/2009 and 76/2011 decided by the Court of Appeal of Tanzania on the one hand. And that, by failing to take cognisance of the aforementioned cases in its determination of the Application 030/2015 (hereinafter referred to as "initial Application") on the other hand; the Court made an error that justifies this Application for Review.

III. Brief background of the matter

5. In his Initial Application 030/2015, filed on 23 November 2015, the Applicant alleged that he was denied justice in the municipal courts of the Respondent State.

6. According to the Applicant, his contractual dispute with a cooperative society was unfairly handled by the municipal courts. He especially submitted that he was awarded trivial damages and that his claim of defamation and his application for taxation of the bill of costs were wrongfully dismissed. The Applicant further alleged that he was unlawfully confined in the Regional Crimes Officer's (hereinafter referred to as "RCO") office in Tabora for a period of eight (8) hours.

7. On 4 July 2019, the Court rendered the Ruling as follows:

i. *Dismisses* the objection to its material jurisdiction;

ii. *Declares* that it has jurisdiction.

iii. *Dismisses* the objection on admissibility based on non-compliance with the Constitutive Act of the African Union and the Charter;

iv. *Declares* that the Applicant failed to exhaust local remedies;

v. *Declares* the Application inadmissible.

8. The Court therefore, dismissed the Applicant's initial Application. The Ruling is the subject of this Review.

IV. Summary of the Procedure before the Court

9. The Application for Review was filed on 4 December 2019 and transmitted to the Respondent State on 18 December 2019.

10. The parties filed their pleadings within the time stipulated by the Court.

11. Pleadings were closed on 2 July 2020 and the Parties were duly notified.

V. Prayers of the Parties

12. The Applicant prays the Court to:

i. Review its judgment of 4 July 2019;

ii. Order the Respondent State to pay him Two Billion, Five Hundred Million (2,500,000,000)Tanzanian shillings as general damages and Four Billion, Two Hundred and Seventy Two Million, Four Hundred and Sixty Eight Thousand and Six Hundred (4,272,468,600) Tanzanian shillings as reparations for breach of his rights; and

iii. Order any other relief as it deems fit and just.

13. The Respondent State prays the Court to declare this Application for Review inadmissible and dismiss it in its entirety.

VI. Jurisdiction

14. In dealing with any Application filed before it, the Court must conduct a preliminary examination of its jurisdiction pursuant to Articles 3 and 5 of the Protocol.

15. Rule 26(1) of the Rules provides: "Pursuant to the Protocol, the Court shall have jurisdiction: … (e) to review its own judgment in light of new evidence in conformity with Rule 67 of these Rules."

16. In the instant case, the Court notes that the Application fulfils the requirements of Rule 26(1) of the Rules, as it is based on the review of the Court's own judgment in light of alleged new evidence and thus finds that it has jurisdiction.

VII. Admissibility

17. In the Application for Review, the Applicant reiterates some of the claims of violation of his rights by the Respondent State that were stated in his initial Application to the Court.

18. The Respondent State submits that the Application lacks merit and thus should be declared inadmissible. It contends that the Applicant has failed to demonstrate discovery of new evidence

and has merely reiterated his allegations in his Application on the merits in respect of his grievances on the conduct of his cases by the municipal courts.

19. According to the Respondent State, the Court analysed some of the issues he raises specifically on wrongful confinement and the damage to his reputation. It contends that the Court found that the Applicant had not exhausted local remedies nonetheless. Furthermore, that although some of the arguments have been raised for the first time, "they do not qualify as new evidence." Relying on the Application for Review of *Thobias Mang'ara Mango and Shukrani Masegenya Mango v the United Republic of Tanzania*, the Respondent State submits that "further evidence in support of previous allegations does not qualify as new evidence that would not have been in the Applicant's knowledge during the time of filing."

20. The Respondent State further avers that the Court considered the two cases where the Applicant indicates that he exhausted local remedies and found that they were contractual disputes and not human rights related. Moreover, it contends that the issues raised by the Applicant herein have already been settled by a decision of this competent Court and thus reconsidering them would be violating the principle of *res judicata*.

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21. Article 28(3) of the Protocol empowers the Court to review its decisions under conditions to be set out in its Rules and the process of review must be without prejudice to Article 28(2) of the Protocol.[2]

22. 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.

2 "The judgment of the Court decided by majority shall be final and not subject to appeal"; *Urban Mkwandawire v Malawi* (review and interpretation) (2014) 1 AfCLR 299 § 14.

23. In addition, Rule 67(2) of the Rules 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.[3]

24. 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 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.

25. The Court will examine the requirements of Article 28(3) of the Protocol and Rule 67(1) of the Rules in tandem, beginning with the issue of the time limit.

26. As regards the filing of the Application within six (6) months of the discovery of new evidence; the Court notes, that the Applicant did not submit on when he discovered the alleged new evidence. Nevertheless, the Application having been filed on 4 December 2019, that is, five (5) months after the delivery of the Ruling of 4 July 2019; it is deemed to have been filed within the six (6) months' time limit and in accordance with Rule 67(1) of the Rules.

27. As regards the condition of the discovery of new evidence, the Court will limit its consideration to the supporting documents that accompanied the Application and which were not in the foreknowledge of the Applicant at the time of the delivery of the Ruling.

28. The Court observes that the supporting documents filed in this Application, include; judgments of the national courts in relation to the Applicant's civil cases, a copy of summons to appear before the Court of Appeal and his advocate's letter of withdrawal.

29. In relation to the supporting documents, the Court recalls that that although, produced for the first time before it, the evidence that is required under Article 28(3) of the Protocol is evidence that exerts influence on its initial decision.[4]

3 *Thobias Mang'ara and Shukrani Mango v Tanzania*, AfCHPR, Application 002/2018, Judgment of 4 July 2019 (review) § 13; *Chrysanthe Rutabingwa v Republic of Rwanda*, AfCHPR, Application 001/2018, Judgment of 4 July 2019 (review) § 14.

4 *Frank David Omary & ors v Tanzania* (review) (2016), 1 AfCLR 383 § 49.

30. The Court further recalls its jurisprudence:
…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.[5]

31. The Court recalls its jurisprudence, where it held:
The application for judicial review must be based on important facts or situations that were unknown at the time the judgment was delivered. The judgment may therefore be impugned for exceptional reasons, such as those involving documents the existence of which was unknown at the time the judgment was delivered; documentary or testimonial evidence or confessions in a judgment that has acquired the effect of a final judgment and is later found to be false; when there has been prevarication, bribery, violence, or fraud, and facts subsequently proven to be false, such as a person having been declared missing and found to be alive.[6]

32. The Court notes that the Applicant merely restates some allegations which the Court had already examined in its Ruling. Also, he advances detailed submissions which stem from the same factual basis and which only seek to substantiate the previous allegations in the initial Application.

33. The Court recalls that in its Ruling of 4 July 2019, it declared the Application inadmissible for failure to exhaust local remedies. It further recalls that it considered Civil Case No.163 of 2000 determined by the High Court and Civil Cases No. 108/2009 and 76/2011 determined by the Court of Appeal and found that the cases concerned contractual disputes.[7]

34. With respect to the inadequate representation and the financial difficulties of the Applicant allegedly caused by the breach of contract; the Court observes that they were not brought to the attention of the Court at the time of delivery of the Ruling. Moreover, they do not constitute new evidence that would not have been in the fore knowledge of the Applicant at the time of delivery of the Ruling and as such, the Applicant should have argued the same before the Court's delivery of its Ruling. Even so, the said information has no bearing on the Court's Ruling that the Applicant failed to exhaust local remedies.

35. In light of the foregoing, the Court finds that the supporting documents adduced do not constitute new evidence which was

5 *Thobias Manga'ra and Shukrani Mango v Tanzania op.cit*. § 25.

6 *Alfred Agbesi Woyome v Republic of Ghana*, AfCHPR, Application for Review No. 001/2020, Judgment of 26 June 2020 (review) § 38.

7 *Ramadhani Issa Malengo v Tanzania op.cit* §§ 40-41.

not within the knowledge of the Applicant at the time the Ruling was delivered, as contemplated by Article 28(3) of the Protocol and Rule 67(1) of the Rules.

36. Therefore, the Court, declares the Application for Review inadmissible and dismisses it.

VIII. Costs

37. The parties did not made any submissions on costs.

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

39. The Court, therefore, rules that each party shall bear its own costs.

IX. Operative part

40. For these reasons,

The Court,

Unanimously

i. *Declares* that it has jurisdiction;

ii. *Declares* that the Application was filed within the prescribed time-limit of six (6) months;

iii. *Declares* that the supporting documents submitted by the Applicant do not constitute new evidence;

iv. *Declares* that the Application for Review of the Ruling of 4 July 2019 is inadmissible and is dismissed;

v. *Decides* that each party shall bear its own costs.