Hassani v Tanzania (admissibility) (2021) 5 AfCLR 414

Application 029/2015, *Yusuph Hassani v United Republic of Tanzania*

Ruling, 30 September 2021. Done in English and French, the English text being authoritative.

Judges: TCHIKAYA, KIOKO, BEN ACHOUR, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, ANUKAM, NTSEBEZA and SACKO

Recused under Article 22: ABOUD

The Applicant who had been convicted and sentenced for armed robbery, brought this Application claiming that his human rights were violated by the manner in which the domestic courts handled his trial and appeals. The Court held the Application was inadmissible on the ground that it had not been filed within a reasonable time.

Jurisdiction (material jurisdiction, 35-36; 46-48 nature of Court's competence, 40-42)

Admissibility (exhaustion of local remedies, 65-69; submission within a reasonable time, 76-84)

I. The Parties

1. Yusuph Hassani (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania, who at the time of filing the Application, was serving a thirty (30) year prison sentence at Maweni Central Prison, Tanga having been convicted of the offence of armed robbery.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), which 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, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), through 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. The Court has held that this withdrawal has no bearing on pending

cases and new cases filed before the withdrawal came into effect, that is, on 22 November 2020.[1]

II. Subject of the Application

A. Facts of the matter

3. It emerges from the record that, on 5 September 2005, the Applicant and three others, Leonard Msangazi, Francis Ngowi and Hashimu Mohamedi, who are not before this Court, allegedly committed armed robbery at a shop, in Bwiti Village, Muheza District.

4. On 29 September 2005, the Applicant and the three above-mentioned persons were jointly charged with armed robbery before the District Court of Muhezaat Muheza, Tanga Region.

5. On 31 August 2006, the Applicant and his co-accused were convicted of the charge and sentenced to thirty (30) years imprisonment, being the statutorily prescribed minimum sentence. They were also ordered to compensate the complainant, the shop owner, Tanzanian Shillings one million, one hundred and thirty-six thousand (TZS 1,136,000), being the value of the stolen property.

6. On 5 January 2007, the Applicant and the three other convicts appealed their conviction and sentence before the Resident Magistrate's Court (with Extended jurisdiction) of Tanga.

7. On 29 May 2008, the Resident Magistrate's Court (with Extended jurisdiction) allowed Leonard Msangazi's and Francis Ngowi's appeal, but dismissed that of the Applicant and Hashimu Mohamedi.

8. On 3 June 2008, the Applicant and Hashimu Mohamedi filed an appeal to the Court of Appeal sitting at Tanga. On 9 March 2010, the Court of Appeal allowed Hashimu Mohamedi's appeal, but dismissed that of the Applicant for lack of merit.

9. The Applicant also claims to have filed on 5 April 2010, a Notice of Motion for Review of the Court of Appeal's judgment with Reference No/112/TAN/1/LV/62, which was pending at the time he filed his Application before this Court on 23 November 2015.

1 *Andrew Ambrose Cheusi v United Republic of Tanzania,* ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

B. Alleged violations

10. The Applicant alleges: that he was "…wrongly deprived of his rights to be heard" on the grounds of:

a. The trial and appellate courts arrived at their conclusions by considering only the prosecution's evidence which was not necessarily true and credible and they did not consider the defence's evidence, especially his defence of *alibi*.

b. Hearing the case and appeal without providing him with a legal counsel, compared to those charged with capital offences, and that this was contrary to Section 13 of the Constitution of the Respondent State,[2] Section 310 of the Criminal Procedure Act of the Respondent State and the Universal Declaration of Human Rights.

c. The doctrine of 'recent possession' was wrongly invoked as it was not proven that the goods or items the Applicant was found with were those that had recently been stolen from the complainant.

d. The trial and appellate courts erred in law and fact by failing to note that most of the prosecution witnesses were not credible witnesses.

e. The trial court failed to note that his constitutional rights were violated by the police, when they failed to comply with the provisions of Sections 32 (1) and (2)[3] and 33[4] of the Criminal Procedure Act thus making the subsequent proceedings null and void.

f. The trial and appellate courts erred in law and fact by convicting the Applicant on the basis of assertions and relying only on the prosecution's evidence despite the fact that he was not at the scene of the crime during the incident as he was arrested at Mahandakini village and then 'joined to the case'**.** The Applicant states that his defence of '*alibi*' is evidenced by the fact that he was arrested at a place other than the area where the incident occurred.

g. The identification parade conducted by the Police which led to his identification as one of the robbers was not properly done and the

2 Section 13 of the Constitution provides for equality before the law.

3 Section 32 (1) and (2) of the Criminal Procedure Act, Cap 20 of the Laws (R.E 2002) provides that: 1 " when any person has been taken into custody without a warrant for an offence other than the offence punishable with death, the officer in charge of the station to which he is brought may, in any case, and shall if it does not appear practicable to bring him before an appropriate court within twenty four hours he was so taken to custody, inquire into the case and , unless the offence appears to that officer to be of a serious nature, release the person on his executing a bond with or without sureties, for a reasonable amount to appear before a court at a time and place to be named in the bond, but where he is retained in custody he shall be brought before the court as soon as practicable." 2 "where any person has been taken into custody without a warrant for an offence punishable with death, he shall be brought before the court as soon as practicable".

4 Section 33 of the Criminal Procedure Act provides that: "An officer in charge of a police station shall report to the nearest magistrate within twenty four hours or as soon as it is practicable, the case of all persons arrested without a warrant within the limits of his station, whether or not such persons have been admitted on bail".

complainant who allegedly owned the shop that was robbed, failed to prove such ownership by providing his business licence and Value Added Tax agreement.

h. The trial and appellate courts erred in law and fact when they discarded the Applicant's unshaken defence and believed the prosecution theory

i. In all circumstances of the case, the guilty verdict against the Applicant was 'unsafe and unsatisfactory'

j. The Court of Appeal did not follow the established jurisprudence on the consideration of circumstantial evidence

k. The Court of Appeal's decision is prejudicial to the smooth and effective administration of justice in the Respondent State.

11. It also emerges from the Application that, the Applicant alleges that the Court of Appeal of Tanzania delayed in determining his application for review of its judgment of 9 March 2010 which he claims to have filed by notice of motion for review on 5 April 2010.

III. Summary of the Procedure before the Court

12. This Application was filed on 23 November 2015 and was served on the Respondent State on 25 January 2016.

13. The Parties filed their pleadings on merits within the time stipulated by the Court and these were duly exchanged between the Parties.

14. On 2 July 2018 the Applicant was notified that henceforth the Court will determine the merits and reparations together, and he was requested to file submissions on reparations within thirty (30) days of receipt of this notice.

15. The Applicant filed his submissions on reparations on 4 September 2018 and these were served on the Respondent State on 12 September 2018. Despite two extensions of time provided by the Court to file the Response to the submissions on reparations, the Respondent State failed to do so.

16. Pleadings were closed on 13 May 2019 and the parties were duly notified.

17. On 26 August 2019, the Respondent State sought leave to file the Response to the Applicant's submissions on reparations, out of time.

18. On 26 September 2019 the Court issued an order for reopening pleadings and accepted the Respondent State's Response on reparations as properly filed. The said Order and Response were served on the Applicant on 27 September 2019 for the Applicant to file the Reply. The Applicant did not file the Reply to the

Respondent State's Response on reparations.

19. On 14 September, 4 December 2020, and 16 August 2021 respectively, the Applicant was requested to submit evidence that he filed before the Court of Appeal of Tanzania, an application for review of its judgment of 9 March 2010. The Applicant did not respond to the requests for this information.

20. Pleadings were closed again on 10 September 2021 and the parties were duly notified.

IV. Prayers of the Parties

21. In the Application, the Applicant prays the Court to quash the decisions of the national courts and set aside his conviction.

22. In his submissions on reparations, the Applicant reiterated his prayers in the Application and prays to be released from prison rather than being provided compensation. He also prays that the Respondent State be ordered to issue a public apology in the media acknowledging that he is innocent of the crime for which he was convicted.

23. With regard to jurisdiction and admissibility, the Respondent State prays the Court to find respectively, that, it "is not vested with jurisdiction to adjudicate over this Application" and "the Application has not met the admissibility requirements stipulated under Rule 40(5) of the Rules of Court".

24. With respect to the merits, the Respondent State prays the Court to find that they did not violate the Applicant's rights under Article 7(1), 7(1)(c) and 7(1)(d) of the Charter.

25. In the Response to the Application, the Respondent State also prays:

i. That the application be dismissed for lack of merit.

ii. That the Applicant continue to serve his sentence.

iii. That the Applicant should not be granted reparation.

iv. That the cost of this Application be borne by the Applicant.

26. In the Response to the submissions on reparations, the Respondent State prays for the following declarations and orders from the Court:

i. A Declaration that the interpretation and application of the Protocol and Charter does not confer jurisdiction to the Court to acquit the Applicant.

ii. A Declaration that the Respondent has not violated the African Charter or the Protocol and that the Applicant was convicted fairly out of due process of the law.

iii. An order to dismiss the Application.

iv. Any other Order this Court might deem right and just to grant under the prevailing circumstances.

V. Jurisdiction

27. The Court notes that Article 3 of the Protocol provides as follows:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol, and any other relevant Human Rights instruments ratified by the states concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

28. The Court further notes that in terms of Rule 49(1) of the Rules: "[T]he Court shall conduct preliminary examination of its jurisdiction … in accordance with the Charter, the Protocol and these Rules".[5]

29. On the basis of the above-cited provisions, the Court must, conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

30. The Respondent State raises an objection to the material jurisdiction of the Court on three grounds.

A. Objections to material jurisdiction

31. The Respondent State submits that, this Application is requesting the Court to sit as a court of first instance, a "first court of appeal", and "a court appellate to the Court of Appeal of the United Republic of Tanzania".

i. Objection that the Court is being called to act as a court of first instance

32. The Respondent State contends that the Applicant is raising for the first time, the allegation that, he was not provided a counsel of his choice during his trial and appeals, as is the case for those charged with capital offences, contrary to the requirements of Article 13 of its Constitution, Section 130 of the Criminal Procedure Act and the Universal Declaration of Human Rights.

33. The Respondent State argues that, were the Court to consider this allegation, it would be acting as a court of first instance, yet it lacks jurisdiction to do so.

34. The Applicant did not respond to this issue.

5 Formerly Rule 39(1) of the Rules of Court, 2 June 2010.

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35. On the objection that the Court lacks jurisdiction since it is not a court of first instance, the Court recalls that under Article 3(1) of the Protocol, it has jurisdiction to examine any application submitted to it, provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State.[6]

36. In the instant case, the Court notes that the Application contains allegations of violation of rights guaranteed under Article 7 of the Charter and the Universal Declaration of Human Rights[7] which are both applicable to the Respondent State. It, therefore, rejects the Respondent State's objection on this ground.

ii. Objection that the Court is being called to act as a first court of appeal

37. The Respondent State contends that the Applicant has raised three allegations which would require the Court to act as "a court of first appeal" yet it lacks jurisdiction to do so. These are:

i. The allegation relating to the doctrine of recent possession;

ii. The allegation relating to the assessment of the credibility of evidence by the trial and appellate courts; and

iii. The allegation relating to the trial court's failure to note that his constitutional rights were violated by the police.

38. In the Respondent State's view, the Applicant ought to have raised these allegations before the first appellate court, that is, the Resident Magistrate's Court (with Extended Jurisdiction) rather than in his Application before this Court.

39. The Applicant did not respond to this issue.

6 *Alex Thomas v United Republic of Tanzania* (merits) (20 November 2015), 1 AfCLR 465 §§ 45 ; *Kennedy Owino Onyachi and Another v United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 65 § 34-36 ; *Jibu Amir alias Mussa and another v United Republic of Tanzania*, ACtHPR, Application No. 014/2015, Judgment of 28 November 2019 (merits and reparations) § 18; *Masoud Rajabu v United Republic of Tanzania*, ACtHPR, Application No. 008/2016 Judgment of 25 June 2021 (merits and reparations) § 21.

7 The Court has also held that the UDHR is part of customary international law, see, *Anudo Ochieng Anudo v United Republic of Tanzania* (merits) (22 March 2018), 2 AfCLR 248 § 76.

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40. The Court notes that, in accordance with its established jurisprudence, it is competent to examine relevant national court's proceedings, to determine their compliance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned.[8] This competence extends to assessment of the compliance of the proceedings at both trial and appellate levels, with the standards set out in the Charter or any other human rights instrument ratified by the State.

41. This assessment by the Court is not constrained by the grounds of appeal that an individual raises or does not raise in the course of all appeal proceedings. It is therefore immaterial whether the Applicant in the instant case failed to raise certain grounds of appeal as set out by the Respondent State, at the first appellate court, the Resident Magistrate's Court (with Extended Jurisdiction).

42. Furthermore, the violations allegedly arising from the proceedings relating to the Applicant, before the Resident Magistrate's Court (with Extended Jurisdiction), are of rights provided for in the Charter and the Universal Declaration of Human Rights which are applicable to the Respondent State. The Court therefore dismisses this objection.

iii. Objection that the Court is being called to act as a court of appeal

43. The Respondent State argues that the consideration of some alleged violations requires the Court to sit as a court of appeal with respect to the Court of Appeal of Tanzania and that by doing so, the Court would adjudicate points of law and evidence already finalised by its Court of Appeal.

44. The Respondent State argues that this relates to the allegations on the trial and appellate courts' failure to consider the Applicant's defence, particularly the defence of *alibi,* the propriety of the identification parade organised by the Police and the lack of evidence to prove the complainant's ownership of the shop that was robbed.

8 *Ernest Francis Mtingwi v Malawi* (jurisdiction) (15 March 2013), 1 AfCLR 190 § 14; *Kenedy Ivan v United Republic of Tanzania*, ACtHPR, Application No. 025/2016, Judgment of 28 March 2019 (merits and reparations) *§ 26; Armand Guehi v United Republic of Tanzania* (merits and reparations) (7 December 2018), 2 AfCLR 477 § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v United Republic of Tanzania* (merits) (23 March 2018), 2 AfCLR 287 § 35.

45. The Applicant did not respond to this contention.

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46. The Court notes that according to its jurisprudence, it can examine the proceedings in the Court of Appeal in order to determine their compliance with the standards set out in the Charter or any other human rights instruments ratified by the Respondent State.[9]

47. Furthermore, the violations allegedly arising from those proceedings are of rights provided for in the Charter and the Universal Declaration of Human Rights which are applicable to the Respondent State.

48. In light of the above, the Court finds that, by considering this Application, it would neither be sitting as an appellate Court vis-à-vis the Court of Appeal of Tanzania nor would it be examining afresh points of law and evidence already determined by that court. The Court therefore rejects this objection by the Respondent State.

49. Consequently, the Court holds that it has material jurisdiction.

B. Other aspects of jurisdiction

50. The Court observes that its personal, temporal or territorial jurisdiction is not in contention. Nonetheless, in line with Rule 49(1) of the Rules, it must satisfy itself that all aspects of its jurisdiction are fulfilled before proceeding.

51. In relation to its personal jurisdiction, the Court recalls, as stated in paragraph 2 of this Ruling that, on 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration made under Article 34(6) of the Protocol. The Court further recalls that it has held that the withdrawal of a Declaration does not have any retroactive effect and it also has no bearing on matters pending prior to the filing of the instrument withdrawing the Declaration, or new cases filed before the withdrawal takes effect.[10] Since any such withdrawal of the Declaration takes effect

9 *Ibid.*

10 *Ingabire Victoire Umuhoza v Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562 § 67.

twelve (12) months after the notice of withdrawal is deposited, the effective date for the Respondent State's withdrawal was 22 November 2020.[11] This Application having been filed before the Respondent State deposited its notice of withdrawal, is thus not affected by it.

52. In light of the above, the Court finds that it has personal jurisdiction to examine the present Application.

53. With respect to its temporal jurisdiction, the Court notes that, the alleged violations occurred after the Respondent State became a Party to the Charter and the Protocol. Furthermore, the alleged violations are continuing in nature since the Applicant remains convicted on the basis of what he considers an unfair process.[12] Consequently, the Court holds that it has temporal jurisdiction to consider the Application .

54. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant happened within the territory of the Respondent State. In the circumstances, the Court holds that its territorial jurisdiction.

55. In light of all the foregoing, the Court holds that it has jurisdiction.

VI. Admissibility

56. Pursuant to 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".

57. In accordance with Rule 50(1) of the Rules,[13] "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules".

58. The Court notes that Rule 50(2) which in essence restates with the provisions of Article 56 of the Charter, provides that:

> Applications filed before the Court shall comply with all the following conditions:
>
> a. Indicate their authors even if the latter request anonymity;
>
> b. Are compatible with the Constitutive Act of the African Union and with the Charter;
>
> c. Are not written in disparaging or insulting language directed against

11 *Andrew Ambrose Cheusi v Tanzania,* §§ 35-39.

12 *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197 §§ 71-77.

13 Formerly Rule 40 of the Rules of Court, 2 June 2010.

the State concerned and its institutions or the African Union;

d. Are not based exclusively on news disseminated through the mass media;

e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;

f. Are submitted 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; and

g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

A. Objections to the admissibility of the Application

59. The Respondent State raises two objections to the admissibility of the Application. These objections relate to the requirement of exhaustion of local remedies and the requirement that the Application be filed within a reasonable time.

i. Objection based on non-exhaustion of local remedies

60. The Respondent State contends that this Application does not meet the admissibility requirement in Rule 40(5) of the Rules,[14] because the Applicant failed to exhaust local remedies available to him at the national Courts.

61. The Respondent State argues that the allegation by the Applicant that he was not provided free legal representation during his trial and appeals, is an allusion to the violation of his constitutional rights. For that reason, it argues that the Applicant was obliged to institute a constitutional petition before the High Court of the Respondent State to have his grievances addressed.

62. The Respondent State further submits that the objective of its enactment of the Basic Rights and Duties Enforcement Act, was to provide for the procedure for the enforcement of constitutional and basic rights, which the Applicant never utilised before seizing this Court. The Respondent State therefore contends, that the Applicant's failure to exhaust these options renders his Application before the Court inadmissible.

14 Rules of Court, 2 June 2010, now Rule 50(2)(e) of the Rules, 25 September 2020.

63. The Respondent State refers the decision of the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") in *Kenyan Section of International Commission of Jurists, Law Society and Others v Kenya* [15] on the need for exhaustion of local remedies prior to filing Applications before international judicial mechanisms. The Respondent State concludes that the failure by the Applicant to utilise the option of a constitutional petition before the High Court of Tanzania effectively implies that his Application should not be entertained by this Court.

64. The Applicant did not reply to this objection.

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65. The Court notes that pursuant to Article 56(5) of the Charter, whose provision is restated in Rule 50(2)(e) of the Rules, any application filed before it shall fulfil the requirement of exhaustion of local remedies. The rule of exhaustion of local remedies aims at providing States the opportunity to deal with human rights violations within their jurisdictions, before an international human rights body is called upon to determine the State's responsibility for the same.[16]

66. The Court recalls that it has held that, in so far as the criminal proceedings against an applicant have been determined by the highest appellate court, the Respondent State will be deemed to have had the opportunity to redress the violations alleged by the Applicant to have arisen from those proceedings.[17]

67. In the instant case, the Court notes that the Applicant's appeal before the Court of Appeal, the highest judicial organ of the Respondent State, was determined when that Court rendered its judgment on 9 March 2010. Therefore, the Respondent State had the opportunity to address the violations allegedly arising from the Applicant's trial and appeals.

15 ACHPR, Communication No. 263/02 (2004) AHRLR 71.

16 *African Commission on Human and Peoples' Rights v Republic of Kenya* (merits) (26 May 2017), 2 AfCLR 9 §§ 93-94.

17 *Mohamed Abubakari v United Republic of Tanzania* (merits) (3 June 2016), 1 AfCLR 599 § 76.

68. Furthermore, the Court has previously held that the constitutional petition within the Respondent State's judicial system is an extraordinary remedy which applicants are not required to exhaust before filing their applications before this Court contrary to the Respondent State's contention in this regard.[18] Accordingly, the Applicant is deemed to have exhausted local remedies.

69. In light of the foregoing, the Court dismisses the Respondent State's objection based on the non-exhaustion of local remedies.

ii. Objection that the Application was not filed within a reasonable time

70. The Respondent State objects to the admissibility of this Application based on the time lapse between the Court of Appeal's judgment on the Applicant's appeal and the filing of the Application before the Court. The Respondent State contends that the Applicant has not complied with Rule 40(6) of the Rules[19] since he took an unreasonably long time before seizing this Court.

71. The Respondent State argues that Applicant's case was concluded by its national courts on 9 March 2010, when the Court of Appeal dismissed his appeal. The Respondent State further contends that even though it deposited its Declaration pursuant to Article 34(6) of the Protocol allowing individuals to access to this Court since March 2010, it took the Applicant five (5) years to file his Application before the Court.

72. The Respondent State also argues that although Rule 40(6) of the Rules[20] does not specify the period within which Applications must be filed after exhaustion of local remedies, the Court must draw inspiration from similar admissibility requirements from other regional judicial mechanisms which set the time at six (6) months. The Respondent State refers to the Commission's decision in *Michael Majuru v Zimbabwe* in this regard.[21]

73. The Respondent State concludes that, since there were no impediments to the Applicant seizing the Court within a reasonable time, the Court should find in its favour and dismiss this Application. The Respondent State also contests the Applicant's claim that he filed an application for review with reference number

18 *Alex Thomas v Tanzania* (merits) §§ 63-65.

19 Rules of Court 2 June 2010, now Rule 50(2)(f) of the Rules, 25 September 2020.

20 *Ibid.*

21 ACHPR, Communication No. 308/2005 ACHPR Annual Activity Report Annex (May- Nov 2008).

No/112/TAN/1/LV/62, which was pending at the time he filed his Application before this Court on 23 November 2015, and that the Applicant be put to strict proof thereof.

74. The Applicant did not reply to the Respondent State's objection.

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75. The Court notes that Article 56(6) of the Charter and Rule 50(2)(f) of the Rules provide that Applications must be filed "…within 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".

76. The Court has held "…that the reasonableness of the time frame for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[22]

77. From the record, the Applicant exhausted local remedies on 9 March 2010, being the date the Court of Appeal delivered its judgment on his appeal. The Applicant then filed the instant Application on 23 November 2015.

78. However, the Court also notes that, when the Court of Appeal of Tanzania delivered its judgment, the Respondent State had not deposited the Declaration by which it accepted the Court's jurisdiction to consider applications filed by individuals. The Respondent State deposited its Declaration on 29 March 2010, therefore it was only from this date, that it was possible for such applications to be filed. The Court has to, therefore, assess whether the period running from 29 March 2010 to 23 November 2015 when the Applicant seized this Court, that is, five (5) years, eight (8) months, and thirteen (13) days is 'reasonable' in terms of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules.

79. To determine whether an application has been filed within a reasonable time, the Court has previously considered the personal circumstances of applicants, including whether they are lay, indigent or incarcerated.[23]

80. Furthermore, the Court has held that it is not enough for an applicant to plead that he was incarcerated, is lay or indigent, to

22 *Norbert Zongo and Others v Burkina Faso* (preliminary objections) § 121.

23 *Christopher Jonas v United Republic of Tanzania* (merits) (28 September 2017), 2 AfCLR 101 § 54; *Amiri Ramadhani v United Republic of Tanzania* (merits) (2018)

justify a failure to file an application within a reasonable period of time. As the Court has reasoned, even for lay, incarcerated or indigent applicants they should demonstrate how their personal situation inhibited them from filing their Applications promptly. It is against this background that the Court found that an Application filed after five (5) years and eleven (11) months was not filed within a reasonable time[24] and the same conclusion was also reached for an Application filed after five (5) years and four (4) months.[25] In yet another case, the Court found that the period of five (5) years and six (6) months was also not reasonable within the meaning of Article 56(5) of the Charter.[26]

81. The Court has also considered as a relevant circumstance, the fact of filing of applications for review before the Court of Appeal of the Respondent State and which were either pending or had been determined, by the time applicants filed their applications before this Court. In such cases, the Court has held that it was reasonable for those applicants to await the outcome of that review process. The Court has therefore considered that, this was an additional factor that justified the delay by those applicants in filing their applications before this Court.[27] However, where an applicant does not provide evidence that he utilised the review process or does not justify his failure to provide the said evidence, this factor cannot therefore be considered in the assessment of the reasonableness of time of filing an application.[28]

82. In the present case, although the Applicant is incarcerated, he has not provided the Court evidence, on the basis of which it could conclude that his personal situation inhibited him from filing the Application promptly. He simply asserts that he exhausted local remedies but provided no justification why it took him five (5) years, eight (8) months and thirteen (13) days to file the Application.

2 AfCLR 344 § 50; *Armand Guehi v Tanzania* § 56; *Werema Wangoko v United Republic of Tanzania* (merits and reparations) (7 December 2018), 2 AfCLR 520 § 49.

24 *Hamad Mohamed Lyambaka v United Republic of Tanzania*, ACtHPR, Application No. 010/2016. Ruling of 25 September 2020 (admissibility) § 50.

25 *Godfred Anthony and another v United Republic of Tanzania,* ACtHPR, Application No. 015/2015. Ruling of 26 September 2019 (admissibility) § 48.

26 *Livinus Daudi Manyuka v United Republic of Tanzania*, ACtHPR, Application No. 020/2015, Ruling of 28 November 2019, (admissibility) § 55.

27 *Armand Guehi v Tanzania (*merits and reparations) § 56; *Werema Wangoko v Tanzania*, (merits and reparations) §§ 48-49.

28 *Kalebi Elisamehe v United Republic of Tanzania*, ACtHPR, Application No. 028/2015, Judgment of 26 June 2020, (merits and reparations) §§ 44-45.

83. The Court also notes that, the Applicant claims to have filed an application for review which was pending at the time he filed his Application. The Respondent State contested this claim by the Applicant. The Applicant has neither submitted proof of filing of the Notice of Motion for Review, despite reminders to do so, nor provided a justification for not doing so, therefore this factor cannot be taken into consideration as justifying the delay in filing the Application.

84. In the absence of any justification by the Applicant for the lapse of five (5) years, eight (8) months and thirteen (13) days before the filing of the Application, the Court finds that this Application was not filed within a reasonable time within the meaning of Article 56(6) of the Charter as restated in Rule 50(2)(f) of the Rules.

85. In the light of the foregoing, the Court upholds the Respondent State's objection that the Application was not filed within a reasonable time.

B. Other conditions of admissibility

86. Having found that the Application has not satisfied the requirement in Rule 50(2)(f) of the Rules, the Court need not rule on the Application's compliance with the admissibility requirements set out in Article 56(1), (2), (3), (4), and (7) of the Charter as restated in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as these conditions are cumulative [29]

87. Therefore, the Application's non-compliance with Article 56(6) of the Charter as restated in Rule 50(2)(f) of the Rules renders the application inadmissible.

VII. Costs

88. The Applicant has not made submissions on costs.

89. The Respondent State prays that the costs of this Application be borne by the Applicant.

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29 *Jean Claude Roger Gombert v Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270 § 61; *Dexter Eddie Johnson v Republic of Ghana* ACtHPR, Application No. 016/2017, Ruling of 28 March 2019, (jurisdiction and admissibility) § 57.

90. Pursuant to Rule 32 of the Rules[30] "[u]nless otherwise decided by the Court, each party shall bear its own costs, if any."

91. Considering the circumstances of this case, the Court decides that each party shall bear its own costs.

VIII. Operative part

92. For these reasons:

The Court

Unanimously,

On Jurisdiction

i. *Dismisses* the objections to its jurisdiction;

ii. *Declares* that it has jurisdiction.

On admissibility

iii. *Dismisses* the objection to the admissibility of the Application based on non-exhaustion of local remedies;

iv. *Finds* that the Application was not filed within a reasonable time within the meaning of Article 56(6) of the Charter and Rule 50(2)(f) of the Rules;

v. *Declares* that the Application is inadmissible.

On costs

vi. *Orders* each party to bear its own costs.

30 Formerly Rule 30(2) of the Rules of Court, 2 June 2010.