

Isiaga v Tanzania (reparations) (2021) 5 AfCLR 214

Application 032/2015, *Kijiji Isiaga v United Republic of Tanzania*

Judgment, 25 June 2021. Done in English and French, the English text being authoritative.

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

Recused under Article 22: ABOUD

The Court had held in its judgment of 21 March 2018 that the Respondent State had in part violated the Applicant's right to fair hearing. In this decision on reparations, the Court denied the prayers for material prejudice and moral prejudice for indirect victims but granted the prayer for moral prejudice suffered by the Applicant.

Reparations (state responsibility, 12; material prejudice, 15, 20; moral prejudice, 25; quantum of damages, 25, 27)

I. Brief background of the matter

1. In his Application filed on 8 December 2015, Mr. Kijiji Isiaga (hereinafter referred to as "the Applicant") alleged that his right to a fair trial had been violated by the United Republic of Tanzania (hereinafter referred to as "the Respondent State") when its local courts relied on contestable evidence to convict and sentence him. He also alleged that he was not provided with legal assistance in the domestic proceedings despite him being lay and indigent.
2. On 21 March 2018, the Court rendered its judgment whose paragraphs v-xi of the operative part read as follows:

On the merits,

 - v. *Holds* that the Respondent State has not violated Articles 2 and 3 (1) and (2) of the Charter relating to freedom from discrimination and the right to equality and equal protection of the law, respectively.
 - vi. *Holds* that the Respondent State has not violated the right to defence of the Applicant in examining the evidence in accordance with Article 7 (1) of the Charter;
 - vii. *Holds* that the Respondent State has violated the Applicant's right to a fair trial by failing to provide free legal aid, contrary to Article 7(1) (c) of the Charter
 - viii. *Does not grant* the Applicant's prayer for the Court to order his release from prison, without prejudice to the Respondent applying such measure proprio motu.
 - ix. *Orders* the Respondent state to take all necessary measures to remedy the violations, and inform the court, within six (6) months

from the date of this judgment, of the measures taken.

- x. *Reserves* its ruling on the prayers for other forms of reparation and on costs.
 - xi. *Grants*, in accordance with Rule 63 of the Rules, the Applicant to file written submissions on the request for reparations within thirty (30) days hereof, and the Respondent state to reply thereto within thirty (30) days.
3. It is this Judgment that serves as the basis for the present Application for reparations.

II. Subject of the Application

4. On 9 May 2018, the Applicant filed his written submissions on reparations following the judgment on the merits rendered on 21 March 2018 by this Court, which found a violation by the Respondent State of Article 7 (1) (c) of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter"), by failing to provide free legal assistance to the Applicant.

III. Summary of the Procedure before the Court

- 5. On 23 March 2018, the Registry transmitted a certified true copy of the judgment on the merits of 21 March 2018 to the Parties.
- 6. The Applicant filed his submissions on reparations on 8 May 2018 and these were served on the Respondent State on 9 May 2018.
- 7. The Parties filed their pleadings within the prescribed time limits.
- 8. Pleadings were closed on 21 April 2020 and the Parties were duly notified.

IV. Prayers of the Parties

9. The Applicant prays the Court to grant him reparations for the period he has spent in custody "calculated per ratio of the national income of each citizen of the [Respondent State]". Alternatively, the Applicant states that, the Respondent State may *proprio motu* take measures to release him from prison in lieu of the pecuniary reparations.
10. On its part, the Respondent State disputes the Applicant's submissions on reparations and prays the Court for:
- i. A Declaration that the Applicant's prayer for reparations has no merit for failure to meet the standards so required for reparations to be awarded;
 - ii. An Order to dismiss the Application;

- iii. Any other Order this Hon. Court may deem right and just to grant under the prevailing circumstances.

V. Reparations

11. 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”.
12. The Court recalls its position that, “to examine and assess Applications for reparation of prejudices resulting from human rights violations, it takes into account the principle according to which the State found guilty of an internationally wrongful act is required to make full reparation for the damage caused to the victim”.¹
13. The Court also reaffirms that reparation “... must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed.”²
14. Measures that a State must take to remedy a violation of human rights includes notably, restitution, compensation and rehabilitation of the victim, satisfaction and measures to ensure non-repetition of the violations taking into account the circumstances of each case.³
15. The Court reiterates that with regard to material prejudice, the general rule is that there must be a causal link between the alleged violation and the prejudice suffered and the burden of proof is on the Applicant who has to provide supporting documents to justify his prayers.⁴ Exceptions to this rule include moral prejudice, which need not be proven, since presumptions are made in favour of the

1 *Mohamed Abubakari v United Republic of Tanzania*, ACtHPR, Application No. 007/2013, Judgment of 4 July 2019 (reparations), § 19; *Alex Thomas v United Republic of Tanzania*, ACtHPR, Application No. 005/2013, Judgment of 4 July 2019 (reparations), § 11; *Lucien Ikili Rashidi v United Republic of Tanzania*, ACtHPR, Application No. 009/2015, Judgment of 28 March 2019 (merits and reparations), §§ 19; *Ingabire Victoire Umuhoza v Rwanda*(reparations) (7 December 2018) 2 AfCLR 202, § 19.

2 *Mohamed Abubakari v Tanzania* (reparations), § 20; *Alex Thomas v Tanzania* (reparations), § 12; *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 20; *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 118.

3 *Mohamed Abubakari v Tanzania* (reparations), § 21; *Alex Thomas v Tanzania* (reparations), § 13; *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 20.

4 *Reverend Christopher R. Mtikila v United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v Burkina Faso*, (reparations) 03 June 2016) 1 AfCLR 346, § 15. *Mohamed Abubakari v Tanzania* (reparations), § 22, *Alex Thomas v Tanzania* (reparations), § 14.

- Applicant and the burden of proof shifts to the Respondent State.
16. In the judgment on the merits, the Court established that the Respondent State violated the Applicant's right to a fair trial by failing to provide him with free legal assistance during his trial in the domestic courts, contrary to Article 7(1)(c) of the Charter.
 17. Relying on the above finding of the Court, the Applicant prays the Court to award him damages in the form of pecuniary and non-pecuniary reparations.

A. Pecuniary reparations

i. Material loss

18. The Applicant alleges that before his arrest, he was a peasant with a wife, children and parents who depended on him. He states that the family's sole source of income was farming and this was disrupted after his arrest and subsequent conviction for offences of armed robbery and inflicting bodily injury. The Applicant prays the Court to grant him reparations for the period he spent in custody calculated *per ratio* of the annual per capita income of the Respondent State.
19. On its part, the Respondent State argues that the Applicant is not a victim of deliberate actions or negligence of the Respondent State but rather that of his own actions. It avers that the Applicant was convicted and sentenced for crimes he committed which affected the rights of other ordinary citizens and the action to take him before the court of law was in exercise of its obligation to protect the rights of innocent citizens. According to the Respondent State, the Applicant has not adduced any evidence to support the claim for material damages suffered as direct victim following the violation established by the Court.

20. The Court notes that when an applicant claims reparations for material prejudice, not only should there be a causal link between the violation established by the Court and the prejudice caused but also the Applicant must specify the nature of the prejudice and

offer a proof thereof.

21. In the instant Application, the Court found in its judgment on the merits that the Applicant's right to legal assistance under Article 7(1)(c) of the Charter was violated.⁵ However, the Court notes that the Applicant neither specifies the precise nature and extent of the material damage he sustained nor does he offer evidence showing that the prejudice was caused by this violation. In fact, the Applicant simply describes his and his family's situation before his arrest, without substantiation and without clearly stating the actual prejudice suffered. In any event, the Applicant's general claims are based on his conviction, sentencing and incarceration, which this Court did not find unlawful.⁶
22. The Court consequently dismisses the Applicant's claims for reparations for material damage.

ii. Moral prejudice

a. Moral prejudice suffered by the Applicant

23. The Applicant claims that the Respondent State should be ordered to pay reparations for the moral prejudice he suffered for fourteen (14) years since 7 April 2004 to April 2018, the time when he filed his claims for reparations.
24. The Respondent State reiterates its assertion that the Applicant's arrest and conviction are a result of his own illegal actions and thus, his claims for reparations for his imprisonment should be denied.

25. The Court recalls its established case-law where it has held that moral prejudice is presumed in cases of human rights violations, and quantum of damages in this respect is assessed based on

5 *Kijiji Isiaga v Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 80.

6 *Armand Guehi v United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 18, *Christopher Jonas v United Republic of Tanzania*, ACtHPR, Application No. 011/2015. Judgment of 25 September 2020 (reparations), § 20.

equity, taking into account the circumstances of the case.⁷ The Court has thus adopted the practice of granting a lump sum in such instances.⁸

26. As indicated above in paragraphs 2 and 4, the Court has already established in its judgment on merits that the Respondent State violated the Applicant's right to free legal assistance on account of which he suffered moral prejudice. Accordingly, the Applicant is entitled to moral damages.
27. In assessing the quantum of damages, the Court's practice has been that it grants applicants an average amount of Three Hundred Thousand Tanzanian Shillings (TZS 300,000) in instances where free legal assistance was not availed by the Respondent State where the Applicant was charged with a serious offence and where there are no extenuating circumstances.⁹ On this basis and exercising its discretion in equity, the Court awards the Applicant the amount of Three Hundred Thousand Tanzanian Shillings (TZS 300, 000) as fair compensation.

b. Moral prejudice suffered by indirect victims

28. The Applicant does not expressly claim reparations for indirect victims but simply states that he used to be the breadwinner of his family, namely, his children, wife and parents before was arrested and convicted.
29. In response to the Applicant's allegation that he had dependent children, wife and parents, the Respondent State argues that there is nothing to prove this fact. In this regard, the Respondent State submits that moral prejudice for indirect victims should be proved but the Applicant failed to do so. Also, that the Applicant, neither establishes the existence of filial relations by providing the children's birth certificates and a marriage certificate for the wife nor does he adduce evidence showing that the prejudice suffered

⁷ *Norbert Zongo and Others v Burkina Faso* (reparations), § 55; and *Ingabire Victoire Umuhoza v Rwanda* (reparations), § 59, *Christopher Jonas v Tanzania* (reparations), § 23.

⁸ *Lucien Ikili Rashidi v Tanzania* (merits and reparations), § 119; *Minani Evarist v United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 18; and *Armand Guehi v Tanzania* (merits and reparations), § 177, *Christopher Jonas v United Republic of Tanzania* (reparations), § 24.

⁹ *Minani Evarist v Tanzania* (merits), § 90; and *Anaclet Paulo v United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 446, § 111, *Christopher Jonas v Tanzania* (reparations), § 25.

by indirect victims was caused by the violation of his right.

30. As already stated above, the Applicant does not explicitly pray the Court to award reparations for his family members. The Applicant has also not adduced documents proving his familial relations with any of his alleged family members. In this circumstance, the Court does not need to consider granting reparations for indirect victims.¹⁰

B. Non-pecuniary reparations

31. In his submissions on reparations, the Applicant also prays that the Court issue an order requiring the Respondent State to release him from prison in lieu of pecuniary reparations.
32. The Respondent does not respond to this prayer.

33. The Court notes that it has already dealt with this prayer in its judgment on merits and therefore, it does not need to pronounce itself again herein.¹¹ Consequently, it dismisses the Applicant's prayer in this regard.

VI. COSTS

34. In terms of Rule 32(2) of the Rules¹² "unless otherwise decided by the Court, each party shall bear its own costs."

10 See *Christopher Jonas v United Republic of Tanzania* (reparations), § 27.

11 *Kijiji Isiaga v Tanzania* (merits), § 96.

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

35. In the instant Application, neither the Applicant nor the Respondent State made submissions on costs.

36. The Court, therefore, holds that each party shall bear its costs.

VII. Operative part

37. For these reasons,

The Court,

Unanimously:

On pecuniary reparations

- i. *Does not grant* the Applicant's prayer for damages for material prejudice;
- ii. *Does not grant* damages for moral prejudice to the indirect victims as the Applicant failed to pray reparations for indirect victims and did not provide proof establishing his familial relations and alleged family members
- iii. *Grants* the Applicant's prayer for damages for the moral prejudice he suffered from the violation of his right to free legal assistance and awards him the sum of Tanzanian Shillings Three Hundred Thousand (TZS300,000);
- iv. *Orders* the Respondent State to pay the amount indicated under (iii) above free from taxes effective six (6) months from the date of notification of this Judgment, failing which it will pay interest on arrears calculated on the basis of the applicable rate of the Central Bank of Tanzania throughout the period of delayed payment until the amount is fully paid.

On non-pecuniary reparations

- v. *Does not grant* the Applicant's prayer for an order of release from custody.

On implementation and reporting

- vi. *Orders* the Respondent State to submit to the Court, within six (6) months of the date of notification of this Judgment, and every six months until the Court is satisfied thereof, a report on the implementation of paragraphs (iii) and (iv) of this operative part

On costs

- vii. *Orders* each party to bear its own costs.