

Umuhoza v Rwanda (reparations) (2018) 2 AfCLR 202

Application 003/2014, *Ingabire Victoire Umuhoza v Republic of Rwanda*
Judgment, 7 December 2018. Done in English and French, the French text being authoritative.

Judges: ORÉ, KIOKO, BEN ACHOUR, MATUSSE, MENGUE, CHIZUMILA, BENSOUOLA, TCHIKAYA, ANUKAM and ABOUD

Recused under Article 22 : MUKAMULISA

The Court ordered reparation, having found that the imprisonment of the Applicant, an opposition leader, had violated her freedom of expression.

Reparations (reparation of material prejudice, 39, 40, currency, 45, lawyers' fees, 46; evidence, 48, 49, 51, 52; moral prejudice, 59-62; impact on family members, 68, 69; release does not preclude compensation, 71)

I. Brief background of the matter

1. By the Application filed before this Court on 3 October 2014, the Applicant indicates that; since 10 February 2010, she has been the object of accusations and judicial proceedings for allegedly propagating the ideology of genocide, complicity in terrorism, sectarianism, divisive tendencies and attempts to sabotage the internal security of the State, creating an armed wing of a rebel movement; the use of terrorism, force of arms and other forms of violence with the intent to destabilise the constitutionally established government. After trial by the High Court of Kigali on 30 October 2012, the Applicant was sentenced to eight (8) years imprisonment. On 13 December 2013, the Applicant lodged an appeal before the Supreme Court which subsequently increased her sentence to fifteen (15) years in prison.

2. Aggrieved at her arrest, trial and imprisonment which she felt violated her rights, the Applicant on 3 October 2014 seized the African Court on Human and Peoples' Rights (hereinafter referred to as "the Court").

3. In the Judgment of the matter delivered on 24 November 2017, the Court decided as follows:

"viii. *Holds* that the Respondent State has violated Article 7(1) (c) of the African Charter on Human and Peoples' Rights as regards the procedural irregularities which affected the rights of the defence;

ix. *Holds* that the Respondent State has violated Article 9(2) of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights on freedom of expression and opinion;

- x. *Orders* the Respondent State to take all necessary measures to restore the rights of the Applicant and to submit to the Court a report on the measures taken within six (6) months;
 - xii. *Defers* its decision on other forms of reparations;
 - xiii. Grants the Applicant, pursuant to Rule 63 of its Rules, a period of thirty (30) days from the date of this judgment to file her observations on the Application for Reparation...”
4. This Application is in respect of the request for reparations filed by the Applicant.

II. Subject matter of the Application

5. The Applicant prayed the Court to annul the sentence of imprisonment and its consequences and award her full compensation for the prejudices suffered by herself, her husband and her three children as a result of the violations of her rights as set out in the Judgment of 24 November 2017.

6. She states that the Court should order the Respondent State to take all the necessary measures to:

- “- annul the fifteen (15) years imprisonment sentence;
- release her forthwith;
- expunge her conviction from the judicial records;
- reimburse her the amount of US\$ 200,000 for the material prejudice suffered,
- pay her the amount of US\$ 100,000 for the moral prejudice suffered.”

7. The Respondent State did not file any observation on this claim for reparation.

III. Summary of procedure before the Court

8. In its Judgment of 24 November 2017, the Court granted the Applicant thirty (30) days to file her Application for reparations.

9. On 21 December 2017, Counsel for the Applicant applied for an extension of time up to 4 January 2018 to submit her Application for reparation, justifying this request by the fact that the Applicant was personally notified of the 24 November 2017 judgment of the Court only on 4 December 2017. The request for extension of time was served on the Respondent State on 22 December 2017.

10. On 3 January 2018, the Applicant filed her Application for reparation, with evidence in support thereof.

11. On 4 January 2018, the Applicant transmitted to the Court an explanatory note on the evidence and reiterated her prayer for a public hearing to enable her to more effectively explain the reparations requested. On 15 May 2018, the Registry notified the Applicant that the Court has not deemed it necessary to hold a public hearing on reparations.

12. On 15 January 2018, the Applicant filed a document rectifying her prayer for reparation. In that document, the Applicant corrected the amount of the legal fees which she estimated at 68,376 Euros instead of 65,460 Euros as indicated in the Application. The *corrigendum* also indicates that, as regards compensation of moral damage, the Applicant claims for herself, her husband and her children the amount of one hundred thousand (100,000) US dollars instead of one million (1,000,000) US dollars.

13. The Applicant's submissions on reparations were served on the Respondent State on 19 March 2018, in accordance with Rule 36(1) of the Rules of Court.

14. On 3 October 2018, the Registry informed the Respondent State that at its 50th Ordinary Session, the Court decided to grant the latter a final 30 days extension and that, after that deadline, it would be in the interest of justice to decide on the application in default in accordance with Rule 55 of its Rules.

15. Although the Respondent State received all the notifications, it did not respond to any of them.

16. On 23 November 2018, the Applicant informed the Court that she had been set free and has left prison.

17. Consequently, in the interest of justice, the Court will examine the instant brief for reparation in the absence of any response from the Respondent State.

IV. On the reparations

18. Pursuant to Rule 63 of its Rules, "The Court shall rule on the request for the reparation, submitted in accordance with Rule 34(5) of these Rules, by the same decision establishing the violation of a human and peoples' right or, if the circumstances so require, by a separate decision."

19. The Court recalls its earlier judgments,¹ and reiterates that to

1 Application No. 013/2011. Judgment of 5/6/2015 (reparations), *Beneficiaries of the Late Norbert Zongo and Others v Burkina Faso* (hereinafter referred to as "*Norbert Zongo v Burkina Faso* Judgment") para 20; Application No. 004/2013. Judgment of 3 June 2016 (reparations), *Lohé Issa Konaté v Burkina Faso* (hereinafter referred to as "*Konate v Burkina Faso* Judgment") para 15.

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.

20. The Court notes 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”.¹ Thus, reparation must, in particular, include restitution, compensation and rehabilitation of the victim, as well as measures to ensure non-recurrence of the violations, taking into account the circumstances of each case.

21. The Court also retains, as a principle, the existence of a causal link between the alleged violation and the prejudice caused, and places the burden of proof on the Applicant who has to provide evidence to justify her prayers.²

22. The Court observes that whenever it is called upon to adjudicate on reparation for damages resulting from violations established by it, it takes into account not only a fair balance between the form of reparation and the nature of the violation, but also the expressed wishes of the victim.

23. In the instant case, the violation of the Applicant’s rights, which generated the Respondent State’s liability, is the breach by the latter, of Articles 7(1)(c) and 9(2) of the Charter and Article 19 of the ICCPR which affected the Applicant’s right to defence and the right to freedom of opinion and expression.

A. Prayer for annulment of the prison sentence and its consequences

24. The Applicant prays the Court to order the Respondent State to annul the criminal conviction and sentence against her, more particularly the fifteen (15) years prison sentence pronounced by the Supreme Court of Kigali.

25. She avers also that the most appropriate form of reparation of the violations of the right to a fair trial is to be set free.

26. The Applicant further prays the Court to order the Respondent State to expunge the conviction from her judicial records, adding that

1 PCIJ, *Chorzow Factory, Germany v Poland*, Jurisdiction, Determination of Indemnities and Merits 26/7/1927, 16/12/1927 and 13/9/1928, Rec. 1927, p 47.

2 Application No. 011/2011. Judgment of 13 June 2014 (reparations), *Reverend Christopher Mtikila v United Republic of Tanzania* (hereinafter referred to as “*Christopher Mtikila v Tanzania Judgment*”) para 40.

the measures to be taken in this regard should be such as would re-establish the situation in which she would have been, had the Respondent State not violated her rights as established by this Court.

27. The Court notes that the Applicant's request is for the Court to order the Respondent State to annul her fifteen (15) years prison sentence and to set her free without re-opening the proceedings.

28. The Court recalls that with respect to the prayer to annul the fifteen (15) year sentence, it has already examined the same in paragraphs 48, 168, 169 and 173 xi of its judgment of 24 November 2017 and will thus not re-examine it.

29. The Court also recalls that it has already made a ruling in the aforesaid Judgment of 24 November 2017 on the question of releasing the Applicant.

30. Moreover, the Court notes that on 23 November 2018, it was informed by the Applicant that she had been set free and had left prison.

31. As regards the Applicant's prayer for an order to the Respondent State to expunge the sentence from her judicial record, the Court notes that expunging the sentence presupposes that the conviction has been quashed and the sentence set aside.

32. Consequently, the Court dismisses the prayer that the conviction be expunged from the Applicant's judicial record.

B. Prayer for reparation of material prejudice

33. The Applicant submits that since her return to Rwanda, she has suffered "multiple arrests, the brunt of which she continues to bear in the hands of the security services and various other governmental institutions."

34. She also claims that she had to incur several costs not only to defend herself before Rwandese and international courts, but also to meet certain expenses required for her survival in the prison environment.

35. For all the foregoing expenses, the Applicant claims the amount of two hundred thousand (US\$ 200,000) United States Dollars to be paid to her in reparation of the material damages suffered. She specifically enumerates the following damages:

- i. Cost of obtaining the release of certain documents from the case file, which amounts to 230,000 Rwandese Francs, equivalent to US\$ 269.10 at the 2010 rate;
- ii. Cost of representation before the High Court of Kigali, the Supreme Court of Rwanda and the African Court, in terms of the fees paid to her lawyers, which amount to 68,376 Euros, or US\$ 83,364;
- iii. Expenditure incurred while in prison which amounts to 1,000

Euros per month accounting for a total of US\$ 109,728 for the 7 years spent in prison.

- iv. The Applicant further states that the amounts presented herein-above do not cover the losses she incurred as a result of her detention. She prays the Court to bring the overall material prejudice suffered to a total of US\$ 200,000.”

36. The Court notes that the request for reparation of material prejudice arising from the violation of a human right must be substantiated by evidence, and where several prayers have been made, each of these must be accompanied by probative supporting documents and buttressed by explanations establishing the link between the expenditure or material loss and the violation.³

37. In the instant case, the Applicant is claiming reimbursement of four (4) different expenditures, three (3) of which relate to procedural costs. These, as the Court has already stated, are part of the *concept* of reparation such that once established, it could order the Respondent State to pay compensation to the victim.

i. Cost of administrative processing of the judicial record

38. Regarding the cost of obtaining the release of certain documents from the case file, the Court notes that the Applicant attached to her Application, copies of two payment receipts; the first in the amount of one hundred and fifty thousand (150,000) Rwandese Francs, and the second for administrative charges in the amount of eighty thousand (80,000) Rwandese Francs issued, on 22 March and 18 May 2011 respectively, by the Rwanda Revenue Authority.

39. As the judicial proceedings instituted against the Applicant started in 2010 and continued right up to 13 December 2013, the date of her last sentence, the Court concludes that the said payment receipts dated between March and May 2011, were in respect of the judicial proceedings against the Applicant.

40. Consequently, the Court grants the Applicant a refund of the costs incurred on administrative processing of her judicial record in the amount of two hundred and thirty thousand (FRw 230,000) Rwandese Francs.

ii. Lawyers’ fees

41. The Applicant is claiming reimbursement of the expenditure she

3 *Christopher Mtikila v Tanzania* Judgment, *op cit* para 40.

incurred to cover the fees and travel expenses of the five (5) lawyers who defended her both before Rwandan courts and before this Court. She attached to her application a synoptic list of the fees paid in the amount of fifty-five thousand three hundred (55,300) Euros, receipts of bank transfers to the lawyers, and receipts in respect of the travel tickets of two lawyers in the amount of five thousand six hundred and twenty-nine Euros, ninety-six cents (5,629.96); and five thousand and seventy-two Euros, six cents (5,072.6) respectively.

42. Regarding the fees paid to the lawyers, the Court notes that the file records show that between 2011 and May 2017, four (4) lawyers, namely: Iain Edwards, J. Hofdijk, Gatera Gashabana and Caroline Buisman, received transfers from the Applicant's bank account to their bank accounts in the sum of nine thousand (9000) Euros, three thousand, seven hundred and forty-five Euros, sixty cents (3,745.60), twenty-four thousand seven hundred and fifty-nine (24,759) Euros and fourteen thousand, one hundred and twenty-nine (14,129) Euros, respectively. The total amount thus established as lawyers' fees stands at fifty-one thousand six hundred and thirty-three Euros, and sixty cents (51,633.60) or sixty thousand one hundred and forty-two United States dollars and seventy-nine cents (US\$60,142.79). The fee agreement signed between Advocate Caroline Buisman, the reasons for the transfer and the acknowledgement of receipt of payment signed by the lawyers attest to the link between the said expenditure and the Applicant's case before the courts.

43. The Court also notes that the Applicant's lawyers' travel costs are buttressed by two air tickets purchase receipts by Barrister Caroline Buisman and Barrister Gatera Gashabana, amounting to five thousand six hundred and twenty-nine Euros, ninety-six cents (5,629.96) and five thousand and seventy-two Euros, six cents (5,072.6) respectively, thus representing a total of ten thousand seven hundred and two Euros, fifty-six cents (10,702.56). However, the Court notes that the cost of purchase of these tickets had already been accounted for in the different bank transfers made by the Applicant to the two lawyers.

44. The Court further notes that the fees paid to lawyers Iain Edwards, van J Hofdijk and Gatera Gashabana were not substantiated in a fees agreement. The Court however holds that the Applicant must have incurred these expenses for the purposes of her defence.

45. The Court holds that given that the Applicant is residing in the territory of the Respondent State, the amount of reparation shall be calculated in the currency in use in the said State.

46. Since the Applicant has been awarded reparation for part of the damages, the Court holds that it is more appropriate to consider the matter in terms of equity and award the Applicant a lump sum of ten million Rwandese Francs (FRw 10,000,000), as reimbursement for

lawyers' fees.

iii. Expenses incurred while in prison

47. The Applicant also contends that from the time she was incarcerated up to now, her monthly expenses in prison amounts to one thousand (1,000) Euros over the period of 7 years spent in prison; hence the claim for reimbursement of one hundred and nine thousand, seven hundred and twenty-eight (US\$109,728) United States dollars. She justifies this claim with a copy of two (2) receipts of transfer of funds amounting to one thousand (1,000) Euros each dated 9 and 13 October 2017, respectively.

48. The Court notes that the Applicant has not substantiated her claim with supporting documents.

49. Consequently, the Court dismisses the claim for reimbursement of the expenses incurred in prison.

iv. Reimbursement of the cost of equipment confiscated

50. The Applicant submits that since the case began, she has been the subject of threats from security services and “various other public institutions”. The Applicant further alleges that her homes have been visited in both Rwanda and The Netherlands and subjected to “illegal searches” which have “resulted in the confiscation of her property (computers and telephones, amongst others).” For all these costs, she prays the Court to put the total reparation compensation at two hundred thousand (US\$ 200,000) United States dollars.

51. The Court has already underscored in its judgment in *Lohé Issa Konaté v Burkina Faso*,⁴ that it does not suffice to show that the Respondent State committed a wrongful act to claim compensation; it is equally necessary to produce evidence of the alleged damages and the prejudice suffered.

52. Since the Applicant has failed to meet the requirement, the Court rules that her claims regarding the nature of the equipment seized or the monetary value of the equipment confiscated are unfounded and therefore dismisses this claim.

C. Prayer for reparation of moral prejudice

53. The Applicant alleges that since her imprisonment, her dreams

⁴ *Konate v Burkina Faso* Judgment, *op cit* paras 46 and 47; *Christopher Mtikila v. Tanzania* Judgment, *op cit* para 31.

and ambitions as well as her political and family life have been totally shattered; that she had been arrested on several occasions, ridiculed and insulted and her honour dragged in the mud. Her reputation and morale have been seriously undermined as well as those of members of her family, that is, her husband and her three children.

54. According to the Applicant, all these physical and psychological suffering are as a result of her arrest, imprisonment and trial in violation of the guarantees of a fair trial.

55. Therefore, the Applicant prays the Court to rule *ex aequo et bono* (based on equity and conscience) and order the Respondent State to take the necessary measures to pay her the sum of one hundred thousand (US\$ 100,000) United States dollars as damages, or the equivalent in Rwandese Francs.

56. The Applicant's prayer for reparation of moral prejudice concerns not only the Applicant herself but also her spouse and three children.

i. Moral prejudice suffered by the Applicant

57. The Applicant contends that immediately after her speech at the Genocide Memorial, a denigration campaign was orchestrated against her by the media and the political class which branded her a proponent of the genocide ideology, sectarianism and negativism, and thus was monitored and her movements followed until her arrest.

58. She also asserts that her detention condition prior to and after her sentence was highly restrictive, at times characterized by isolation, deprivation of food and prohibition from receiving visitors including her lawyers, two of whom were remanded in custody for more than one day before being expelled from Rwanda.

59. The Court recalls that, in general, when persons are detained under such conditions as have been described by the Applicant, the moral prejudice they invoke is presumed, such that it is no longer necessary to show proof to the contrary.⁵

60. The Court also notes that the campaign of denigration against the Applicant, the number of press articles and the interviews granted by political and administrative figures on the accusations levelled against the Applicant, cast a dark shadow over her personality and her political ambitions.

61. As the International Court of Justice has pointed out in its Advisory Opinion on Application for Review of Judgment No. 158 of the

⁵ *Norbert Zongo v Burkina Faso* Judgment, para 61. See also Inter-American Court of Human Rights; *Lori Berenson v Peru*, Seriea C, No. 119/2004, para 237; European Court of Human Rights, Application No. 9540/07 (2014), *Murat Vural v Turkey*, para 86.

United Nations Administrative Tribunal, *Falsa Case*, Advisory Opinion of 12 July 1973: “The injury to the Applicant’s professional reputation and employment opportunities must be repaired”.⁶

62. The Court finds in conclusion that the Applicant suffered moral prejudice in terms of her reputation and political future, and accedes to her prayer for reparation.

ii. Moral prejudice suffered by the Applicant’s spouse and children

63. Regarding members of her family, the Applicant invokes the stress, anxiety and trauma suffered by her husband and three children since her arrest and imprisonment.

64. The Applicant further asserts that her husband was profoundly affected and traumatized by her arrest, the media coverage of her trial and her attendant imprisonment, such that as of today he has been paralyzed and confined to a wheel chair.

65. She further contends that her youngest son suffered serious harassment in school from his school mates who branded him a son of a criminal.

66. The Court recalls that it has already given the interpretation that direct or close members of the family who suffered physically or psychologically from the situation of the victim also fall within the definition of “victim”, and may also claim reparation of the moral prejudice caused by the said suffering.⁷

67. In the instant case, the accusations levelled against the Applicant, her imprisonment and the restrictions to her communication with her husband and children are indeed acts which could hugely impact the morale of the family.

68. The Court notes that the consequences of stress and generalized anxiety on members of the Applicant’s family are corroborated by the medical reports presented by the doctor at the Neurology Polyclinic in Gouda, The Netherlands, on 27 September 2016 and 25 July 2017, respectively. The said reports mentioned in particular that the Applicant’s husband is a non-smoker, does not take alcohol but is steeped in anxiety and is highly stressed as a result of the challenges facing his family.

69. In the circumstances, the Court holds that the violation of the Applicant’s rights by the Respondent State also impacted on members

6 United Nations Administrative Tribunal, *Falsa Case*, Opinion No. 12/7/1973, *Rec.*, 1973, para 46, p 25.

7 *Norbert Zongo v Burkina Faso* Judgment, *op cit* para 49.

of her family.

70. The Applicant prays the Court to order the Respondent State to pay her the amount of one hundred thousand (US\$ 100,000) US dollars in reparation of the moral prejudice.

71. The Court notes that presidential pardon which led to the Applicant's release on 15 September 2018 constitutes a form of reparation of the moral damage, but does not preclude the payment of monetary compensation for the violation of the right to freedom of expression.

72. In that regard, the Court adjudicates in equity and grants the Applicant, the amount of fifty-five million Rwandese Francs (FRw 55,000,000) in reparation of the moral damage suffered by herself, her spouse and children.

73. On costs, the Court notes that these have already been addressed in the context of refund of lawyers' fees.

V. Operative part

74. For these reasons:

The Court,
unanimously,

- i. *dismisses* the prayer for the conviction to be expunged from the Applicant's judicial records;
- ii. *orders* the Respondent State to reimburse the Applicant the amount of ten million, two hundred and thirty thousand Rwandese Francs (FRw 10,230,000) for the entire material prejudice suffered;
- iii. *orders* the Respondent State to pay the Applicant the amount of fifty-five million Rwandese Francs (FRw 55,000,000) as compensation for the moral prejudice she, her husband and her three children suffered;
- iv. *orders* the Respondent State to pay all the amounts indicated in sub-paragraph (ii) and (iii) of this operative part within six (6) months, effective from the date of notification of this Judgment, failing which it will also be required to pay interest on arrears calculated on the basis of the applicable rate set by the Central Bank of Rwanda throughout the period of delayed payment and until the amount is fully paid;
- v. *orders* the Respondent State to submit to it within six (6) months from the date of publication of this Judgment, a report on the status of implementation of all the decisions set forth in this Judgment.