AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

KIJA NESTORY JINYAMU

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 015/2018

JUDGMENT

13 NOVEMBER 2024

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES
The Registrar
LE GREFFIER
ARUSHA TANZANIA

TABLE OF CONTENTS

The Court composed of: Modibo SACKO, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"),[1] Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Kija Nestory JINYAMU

Self-represented

Versus

THE UNITED REPUBLIC OF TANZANIA

Represented by:

Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General.

After deliberation,

Renders this Judgment:

[1] Rule 9(2), Rules of Court, 1 September 2020.

I. THE PARTIES

1. Mr Kija Nestory Jinyamu (hereinafter referred to as "the Applicant") is a national of the United Republic of Tanzania who is currently incarcerated in Uyui Central Prison. He is awaiting execution, having been tried and convicted of murder. The Applicant alleges the violation of his right to a fair trial during the domestic proceedings.

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, on 29 March 2010, the Respondent State 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 (hereinafter referred to as "NGOs"). On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period of one year after its deposit.[2]

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges, from the record, that on 23 August 1999, the Applicant was found in possession of twenty-two (22) heads of marked cattle belonging to one Masigana Nundu who had been murdered alongside his wife Nsamaka Jilala and daughter-in-law Ngwalu Chela on 20 August 1999 at Mwangili

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

Village within the District and Region of Shinyanga. He was arrested, charged with three different counts of murder and tried before the High Court in Tabora.

4. On 21 September 2007, the High Court found the Applicant guilty of murder on all the three counts under the doctrine of recent possession and sentenced him to death by hanging.

5. The Applicant appealed against this decision before the Court of Appeal at Tabora, which dismissed the appeal on 18 April 2013 as baseless.

6. He then filed an Application for review of the decision of the Court of Appeal which was also dismissed on 23 August 2017.

B. Alleged violations

7. The Applicant alleges the violation of his right to a fair trial owing to the fact that his conviction was, allegedly, based on evidence that was not substantiated.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was filed at the Registry on 6 June 2018 and served on the Respondent State on 27 June 2018, which was given 60 days to file its Response.

9. The Respondent State did not file a Response within the time allocated to it and even after several reminders,[3] it did not file its Response to the Application.

[3] By letter dated September 6, 2018, received at the Registry on September 13, 2018, the Respondent State requested for an extension of the deadline for filing its response to the Application and indicated that the delay was due to the need to consult various stakeholders. The reminders were sent on 13 September 2018, 18 September 2018, 24 August 2018 and 21 January 2019.

10. On 25 March 2024, pursuant to Rule 63(1) of the Rules, the Registry served the Application and the procedural documents on the Respondent State informing the latter that failing to file a Response within forty-five (45) days from the date of receipt of the Notice, the Court would proceed to renter a judgment in default. Notwithstanding this Notice, the Respondent State still did not file any Response.

11. Pleadings were closed on 25 July 2024 and the Parties were duly notified.

IV. PRAYERS OF THE PARTIES

12. The Applicant prays the Court to grant the following orders:

    i. Quash his conviction;
    ii. Set aside the decision of the Court of Appeal and order his release from prison; and
    iii. Order the Respondent State to pay him reparations for the time spent in prison.

13. The Respondent State did not file any pleadings before this Court.

V. DEFAULT OF THE RESPONDENT STATE

14. Rule 63(1) of the Rules provides that:

> Whenever a Party does not appear before the Court or fails to defend its case within the period prescribed by the Court, the Court may, on the Application of the other Party or on its own motion, enter judgment in default after it has satisfied itself that the defaulting Party has been duly served with the Application and all other documents pertinent to the proceedings.

15. The Court notes that the aforementioned Rule 63(1) sets out three (3) conditions for granting a judgment in default, namely: (i) where the party does not appear before the Court, or fails to defend its case within the period prescribed by the Court, (ii) where the Court is satisfied that the defaulting party has been duly served, and (iii) upon the Court's own cognizance or where another party applies for judgment in default.

16. With regard to the first condition, the Court observes that, although the Application was transmitted to the Respondent State, it did not file a defence.[4]

17. With regard to the second condition, the Court notes that it ensured that the Respondent State received the Application and all pleadings, notably through a second communication made to the Respondent State on 25 March 2024. The Court notes that the Respondent State has not filed a Response despite the additional period of 45 days granted to it.

18. Regarding the third condition, the Court notes that rule 63(1) of the Rules confers on it the power to deliver a judgment by default either *ex officio* or at the request of the other Party. In the instant Application, the Applicant has not made a request to this end. The Court will thus proceed to render a judgment by default for the proper administration of justice.[5]

19. The required conditions having thus been fulfilled, the Court hereby proceeds to issue this judgment by default.[6]

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[4] By letter dated September 6, 2018, received at the Registry on September 13, 2018, the Respondent State requested an extension of the deadline for filing its response to the Application and indicated that the delay was due to the need to consult various stakeholders. The Respondent State in a letter dated 12 February 2019 received at the Registry on 20 March 2020, requested the Court for an extension of six (6) months in which to file its response to the forty-nine (49) Applications including this one and on reparations. The reason provided was that it was moving offices to a new location, additionally, there was current shortage of human resources to deal with the heavy workload to file responses in time and finally, there was need to consult with various stakeholder and to deliberate with government agencies.
[5] *Commission africaine des droits de l'homme et des peuples c. Libye* (fond) (2016) 1 RJCA 158, §§ 38 à 42; *Fidèle Mulindahabi c. Rwanda*, CAfDHP, Requête n° 010/2017, Arrêt du 26 juin 2020 (compétence et recevabilité), § 30. *Yusuph Said c. République-Unie de Tanzanie*, CAfDHP, Requête n° 011/2019, Arrêt du 21 septembre 2021 (compétence et recevabilité), § 17; *Robert Richard c. République-Unie de Tanzanie*, CAfDHP, Requête n° 035/2016, Arrêt du 2 décembre 2021 (fond et réparations), §§ 17 à 18.
[6] *Ibid*.

VI. JURISDICTION

20. The Court observes 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 instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

21. Pursuant to Rule 49(1) of the Rules, it "shall conduct a preliminary examination of its jurisdiction […] in accordance with the Charter, the Protocol and these Rules."[7]

22. In view of the foregoing, the Court must conduct an assessment of its jurisdiction and dispose of objections thereto, if any.

23. The Court notes that, even though nothing on the record indicates that it lacks jurisdiction, it is obligated to determine if it has jurisdiction to consider the Application.

24. Regarding its material jurisdiction, the Court has previously held that Article 3(1) of the Protocol empowers it to examine an Application provided that it contains allegations of violations of rights protected by the Charter, or any other human rights instruments ratified by the Respondent State.[8] Given that the present Application contains allegations of violations of the rights guaranteed under Article 3 of the Charter, the Court concludes that it has material jurisdiction to examine this Application.

[7] Rule 39(1), Rules of Court, 2 June 2010.
[8] *Alex Thomas v. United Republic of Tanzania* (merits) (2015) 1 AfCLR 465, § 45; *Oscar Josiah v. United Republic of Tanzania* (merits) (28 March 2019) 3 AfCLR 83, § 24.

25. Concerning its personal jurisdiction, the Court notes that the Respondent State is a Party to the Protocol and deposited the Declaration prescribed under Article 34(6) of the Protocol, which enabled the Applicant to file this Application pursuant to Article 5(3) of the Protocol. Although the Respondent State, on 21 November 2019, withdrew its Declaration, the Court recalls that the withdrawal of the Declaration does not have any retroactive effect, and it also has no bearing on the matters pending prior to the deposit of the instrument of withdrawal of the Declaration, as is the case with the present Application.[9] Accordingly, the Court finds that it has personal jurisdiction.

26. With regard to its temporal jurisdiction, the Court notes that the alleged violations were committed after the Respondent State became a Party to the Protocol on 10 February 2006. Notably, the Applicant was found guilty and sentenced to death by the High Court on 21 September 2007 and all domestic proceedings he complains of took place thereafter. Furthermore, the Court observes that the Applicant remains convicted on the basis of what he considers an unfair process. Therefore, it holds that the alleged violations can be considered to be continuing in nature.[10] For these reasons, the Court finds that it has temporal jurisdiction to examine this Application.

27. As for its territorial jurisdiction, the Court notes that the violations alleged by the Applicant all happened within the territory of the Respondent State which is a party to the Protocol. In the circumstances, the Court finds that it has territorial jurisdiction.

28. In light of all of the above, the Court holds that it has jurisdiction to determine the present Application.

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[9] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2013) 1 AfCLR 540, § 67; *Laurent Munyadilikirwa v. Republic of Rwanda*, ACtHPR, Application No. 023/2015, Ruling of 2 December 2021 (jurisdiction and admissibility), § 10.

[10] *Norbert Zongo and Others v. Burkina Faso* (preliminary objections) (21 June 2013) 1 AfCLR 197, §§ 71-77.

VII. ADMISSIBILITY

29. Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."

30. Pursuant to Rule 50(1) of the Rules, "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".

31. Further, Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Disclose the identity of the Applicant notwithstanding the latter's request for anonymity;
> b. Comply with the Constitutive Act of the Union and the Charter;
> c. Not contain any disparaging or insulting language;
> d. Not based exclusively on news disseminated through the mass media;
> e. Be filed after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. Be filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised with the matter;
> g. Not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.

32. The Applicant submits that his Application fulfils the admissibility conditions specified under Rule 50 of the Rules. Although this Application is being considered in default, in line with Rule 50(1) of the Rules, the Court must still satisfy itself that the Application fulfils all the admissibility requirements before proceeding.

33. From the record, the Court notes that the Applicant has been clearly identified by name, in fulfilment of Rule 50(2)(a) of the Rules.

34. The Court also notes that the claims made by the Applicant seek to protect his rights guaranteed under the Charter. Furthermore, one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Additionally, the Application does not contain any claim or prayer that is incompatible with a provision of the said Act. Therefore, the Court considers that the Application is compatible with the Constitutive Act of the African Union and the Charter and holds that it meets the requirement of Rule 50(2)(b) of the Rules.

35. The Court further notes that the language used in the Application is not disparaging or insulting to the Respondent State or its institutions in fulfilment of Rule 50(2)(c) of the Rules.

36. The Application is not based exclusively on news disseminated through mass media, as it is founded on court documents from the domestic courts of the Respondent State, in fulfilment of Rule 50(2)(d) of the Rules.

37. Regarding to the requirement of exhaustion of local remedies, it is clear, from the record, that the Applicant appealed his conviction and sentence up to the Court of Appeal, the highest judicial organ of the Respondent State. This appeal was determined when that Court of Appeal rendered its judgment on 18 April 2013. The Court finds, based on foregoing, that the requirement of exhaustion of local remedies has been met in accordance with Rule 50(2)(e) of the Rules.

38. With respect to the requirement that the Application should be filed within a reasonable time after exhaustion of local remedies, the Court observes that, in the present Application, the Court of Appeal rendered its judgment on the Applicant's appeal on 18 April 2013.The Applicant later filed an Application for review of the Court of Appeal's judgment, which was dismissed on 23 August 2017. The Applicant then filed the present Application on 6 June 2018. Regarding the filing of an Application for review at the Court of Appeal, this Court has already held that within the Respondent State's judicial system, this is an extraordinary remedy which Applicants are not required to exhaust before filing their Applications before this Court.[11]

39. In the circumstances, the Court notes that the period to be considered should be that of nine months and nine days which elapsed between the date of the Court of Appeal's decision on the Application for review and the filing of the present Application.

40. The Court recalls its jurisprudence that: "…the reasonableness of the time frame for seizure depends on the specific circumstances of the case…".[12] Furthermore, the Court has previously considered relatively short periods of time as manifestly reasonable.[13]

41. In the present case, the Court finds the period of nine months and nine days to be manifestly reasonable. It, therefore, finds that the Application is in line with the requirements of Rule 50(2)(f) of the Rules.

42. Further, the Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the

[11] *Alex Thomas v. United Republic of Tanzania*, *op. cit.*, §§ 63-65; *Mohamed Abubakari v. Tanzania* (merits), *supra,* §§ 66-70; *Christopher Jonas v. Tanzania* (merits), § 44.
[12] *Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise IIboudo v. Republic of Burkina Faso* (merits) (24 June 2014) 1 AfCLR 219, § 92. See also *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 73.
[13] *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No 058/2016, Judgment of 13 June 2023 (merits and reparations), § 58.

United Nations, the Constitutive Act of the African Union, the provisions of the Charter, in compliance with Rule 50(2)(g).

43. Overall, therefore, the Court finds that all the admissibility conditions have been met and holds that this Application is admissible.

VIII. MERITS

44. The Applicant, in the present Application, alleges a violation of his right to a fair trial owing to the manner in which the trial court arrived at his conviction.

45. Although the issue is not expressly raised in this Application, this Court notes, from the record, that the Applicant was mandatorily sentenced to death for the offence of murder.[14] Given that this Court has previously adjudicated on this issue, the Court will, therefore, make a determination as to whether a finding in this respect was warranted in the present Application.

A. Alleged violation of the right to have one's cause heard

46. The Applicant alleges that, in arriving at his conviction based on the doctrine of recent possession, the trial judge and the judges of the Court of Appeal relied on circumstantial evidence, which was weak, amounting to mere suspicions and not proved beyond a reasonable doubt. He, therefore, argues that his conviction resulted into a violation of his right to a fair trial.

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47. Article 7(1) of the Charter provides that "[e]very individual shall have the right to have his cause heard…".

[14] See *Deogratius Nicolaus Jeshi v. United Republic of Tanzania*, ACtHPR, Application No. 017/2016, Judgment of 13 February 2024 (merits and reparations), §§ 109-112.

48. The Court has previously held that "… a fair trial requires that the imposition of a sentence in a criminal offence, and in particular a heavy prison sentence, should be based on strong and credible evidence. That is the significance of the right to the presumption of innocence also enshrined in Article 7 of the Charter."[15]

49. In the instant case, the Applicant alleges that the procedures before domestic courts, especially the assessment of the evidence in his case, tainted his conviction. He contends that his sentence constituted a denial of justice.

50. The Court reiterates its position in *Kijiji Isiaga v. Tanzania* that:

> …domestic Courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence, and as an international human rights Court, this Court cannot take up this role from the domestic Courts and investigate the details and particularities of evidence used in domestic proceedings.[16]

51. Furthermore, the Court has consistently held that:

> As regards, in particular, the evidence relied on in convicting the Applicant, the Court holds that, in was indeed not incumbent upon it to decide on their value for the purposes of reviewing the said conviction. It is however of the opinion that, nothing prevents it from examining such evidence as part of the evidence laid before it so as to ascertain in general, whether consideration of the said evidence by the national judge was in conformity with the requirements of fair trial within the meaning of the article of the Charter referred to.[17]

[15] *Abubakari v. Tanzania* (merits), *supra*, § 174; *Diocles William v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 426, § 72.
[16] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.
[17] *Abubakari v. Tanzania* (merits), *supra*, §§ 26 and 173.

52. The above notwithstanding, the Court can evaluate whether the manner in which domestic proceedings were conducted, including the assessment of evidence, to determine if the same was done in consonance with international human rights standards.

53. From the record, this Court observes that the High Court exhaustively considered the evidence presented in the Applicant's case and its findings were upheld by the Court of Appeal. It considered, for example, the fact that the Applicant's co-accused *Lugwisha*, who later died in custody, informed the police authorities when they raided his homestead that the remaining stolen marked cattle were kept there by the Applicant; the fact that four (4) prosecution witnesses, corroborated the evidence of the other witnesses in identifying the marked and stolen cattle and the fact that the Applicant failed to provide a satisfactory account of how he came to be in possession of the marked cattle. The only logical and reasonable conclusion, therefore, corresponded with the Applicant's guilt. The Court further notes that the Applicant has failed to demonstrate how the Court of Appeal's evaluation of the evidence revealed manifest errors requiring its intervention.

54. In light of the foregoing, the Court dismisses this allegation and finds that the Respondent State did not violate Article 7(1) of the Charter in relation to the manner in which the trial court arrived at the conviction of the Applicant.

B. Violation of the right to life

55. It emerges from the record that the Applicant was mandatorily sentenced to death under a law that does not allow the Judicial Officer discretion to impose a different punishment. The Court, in these circumstances, reiterates its jurisprudence that the imposition of the mandatory death penalty is a violation of the right to life under Article 4 of the Charter.[18]

[18] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, §§ 104-114*; Amini Juma v. United Republic of Tanzania,* ACtHPR, Application no. 024/2016, Judgement of 30 September 2021 (merits and reparations), §§ 120-131.

56. The Court, therefore, holds that the Respondent State violated the Applicant's right to life protected under Article 4 of the Charter by imposing the mandatory death penalty on the Applicant.

C. Violation of the right to dignity

57. The Court notes that the Applicant was sentenced to death by hanging. In *Ally Rajabu and Others v. Tanzania*, the Court observed that many methods used to implement the death penalty have the potential of amounting to torture, as well as cruel, inhuman and degrading treatment given the amount of suffering and pain involved. It also held that hanging a person is one of such methods that is inherently degrading.[19] The Court recalls its position in the matter of *Amini Juma v. Tanzania* where it held that the execution of the death penalty by hanging encroaches upon the dignity of a person in respect of the prohibition of torture and cruel, inhuman and degrading treatment.[20]

58. The Court reiterates its position that in accordance with the very rationale for prohibiting methods of execution that amount to torture or cruel, inhuman and degrading treatment, the prescription should be that methods of execution must exclude suffering or involve the least suffering possible in cases where the death penalty is permissible.[21]

59. Having found that the mandatory imposition of the death sentence violates the right to life due to its obligatory nature, the Court holds that, as the method of implementation of that sentence, that is hanging, inevitably encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment.[22]

[19] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* §§ 118-119.
[20] *Juma v. Tanzania* (judgment)*, supra,* § 136.
[21] *Rajabu and Others v. Tanzania* (merits and reparations), *supra,* § 118.
[22] *Ibid,* §§ 119-120.

60. Given the above, the Court finds that the Respondent State violated the Applicant's right to dignity and not to be subjected to cruel, inhuman or degrading punishment and treatment guaranteed under Article 5 of the Charter regarding the imposition of the death sentence by hanging.

IX. REPARATIONS

61. The Applicant prays the Court to set aside the decision of the Court of Appeal and to order his release; to order the Respondent State to pay him reparations for the time spent in prison and to order any other remedy that the Court deems fit.

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

63. As the Court has consistently held, for reparations to be granted, the Respondent State should first be internationally responsible for the wrongful act. Second, causation should be established between the wrongful act and the alleged prejudice. Third, where it is granted, reparation should cover the prejudice suffered. Lastly, the Applicant bears the onus to justify the claims made.[23]

64. In the present Application, the Court has found that the Respondent State violated the Applicant's right to life and to dignity, guaranteed under Articles 4 and 5 of the Charter respectively in relation to the mandatory imposition of the death penalty and execution by hanging. The Court, therefore, finds that the Respondent State's responsibility has been established. The

[23] *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 157.

Applicant is, therefore, entitled to reparations commensurate with the established violations.

65. The Court notes that the Applicants' prayers relate to both pecuniary and non-pecuniary reparations.

A. Pecuniary reparations

i. Material prejudice

66. The Court recalls that for it to grant reparations for material prejudice, there must be a causal link between the violation established by the Court and the prejudice caused and there should be a specification of the nature of the prejudice and proof thereof. [24] Further, this Court has held that an Applicant bears the burden of providing evidence to support his/her claims for material prejudice.[25]

67. In the instant case, the Applicant simply prays the Court to grant reparations to the extent that the Court deems fit. In any event, he does not support his prayers with proof of the loss incurred.

68. In the circumstances, the Court, therefore, does not grant reparation for material prejudice to the Applicant.

ii. Moral prejudice

69. While not specifically referring to moral prejudice, the Applicant prays for the Court to order the Respondent State to pay reparations in such amount as the Court deems fit.

[24] *Nguza Viking (Babu Seya) and Another v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, §15 and *Kijiji Isiaga v. Republic of Tanzania*, AfCHPR, Application No. 011/2015, Judgment of 25 June 2021 (reparations), § 20.
[25] *Msuguri v. Tanzania* (merits and reparations), supra, § 122; *Elisamehe v. Tanzania* (merits and reparations), supra, § 97 and *Guehi v. Tanzania* (merits and reparations), supra, § 15.

70. The Court notes that, moral prejudice is that which results from the suffering, anguish and changes in the living conditions for the victim and his family.[26] As established in this judgment, the Applicant suffered several violations which inherently involve moral prejudice. These include imposition of the mandatory death penalty, the death row, all of them compounded by overall inhuman and degrading treatment. The Court further observes that in the instant Application, while the death sentence is yet to be carried out, the Applicant has inevitably suffered prejudice from the established violations caused by the imposition of the mandatory death sentence.

71. In light of the foregoing, the Court holds that the Applicant is entitled to moral damages as there is a presumption that he has suffered some form of moral prejudice as a result of the above-mentioned violations. The Court has held that the assessment of quantum in cases of moral prejudice must be done in fairness and taking into account the circumstances of the case.[27] The practice of the Court, in such instances, is to award lump sums for moral loss.[28]

72. In view of all of the above, and taking into account similar cases involving the Respondent State,[29] the Court awards the Applicant the sum of Three Hundred Thousand Shillings Tanzania Shillings (TZS 300,000) as moral damages.

[26] *Mtikila v. Tanzania* (reparations), supra, § 34; *Cheusi v. Tanzania* (judgment), supra, § 150 and *Viking and Another v. Tanzania* (reparations), supra, § 38.
[27] *Juma v. Tanzania* (judgment), supra, § 144; *Viking and Another v. Tanzania* (reparations), supra, § 41 and *Umuhoza v. Rwanda* (reparations), supra, § 59.
[28] *Zongo and Others v. Burkina Faso* (reparations), supra, §§ 61-62 and *Guehi v. Tanzania* (merits and reparations), supra, § 177.
[29] *Crospery Gabriel and Another v. United Republic of Tanzania*, ACtHPR, Application No. 050/2016, Judgment of 13 February 2024 (merits and reparations), § 153; *Romward William v. United Republic of Tanzania*, ACtHPR, Application No. 030/2016, Judgment of 13 February 2024 (merits and reparations), § 86.

B. Non-pecuniary reparations

i. Amendment of the law to protect life and dignity

73. In the present Judgment, the Court has found that the Respondent State violated the Applicant's right to life and to dignity, guaranteed under Articles 4 and 5 of the Charter, in relation to the mandatory imposition of the death penalty and its execution by hanging.

74. The Court, therefore, orders the Respondent State to take all necessary measures to remove, within six months of the notification of this Judgment, the provision for the mandatory imposition of the death sentence from its laws.[30]

75. Regarding the Court's finding that the method of execution of the death penalty by hanging is inherently degrading,[31] the Court orders the Respondent State to undertake all necessary measures to remove "hanging" from its laws as the method of execution of the death sentence, within six months of the notification of this Judgment.[32]

ii. Release and rehearing

76. Regarding the Applicants prayer for release from prison, the Court recalls its jurisprudence that "[t]he Court can only order a release if an Applicant sufficiently demonstrates or if the Court by itself establishes from its findings that the Applicant's arrest or conviction is based entirely on arbitrary considerations and that his continued detention would occasion a miscarriage of justice."[33] In the present Application, the Court, however,

[30] *Rajabu and Others v. Tanzania*, *supra*, § 163; *Juma v. Tanzania, supra*, § 170; *Henerico v. Tanzania, supra*, § 207; *Ghati Mwita v. United Republic of Tanzania*, ACtHPR, Application no. 012/2019 Judgment of 1 December 2022 (merits and reparations), § 166.
[31] *Rajabu and Others v. Tanzania*, *supra*, § 118.
[32] *Chrizant John v. United Republic of Tanzania,* ACtHPR, Application no. 049/2016, Judgment of 7 November 2023 (merits and reparations), § 155.
[33] *Henerico v. Tanzania* (merits and reparations), supra, § 202; *Mgosi Mwita Makungu v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 550, § 84; *Minani Evarist v. United Republic of*

notes that the established violations does not impact on the Applicant's guilt and conviction. Further, the sentence is affected only to the extent of the mandatory nature of the penalty. Given the foregoing, the Court holds that an order for release of the Applicant is not warranted. Consequently, the prayer is dismissed.

77. Having dismissed the prayer for release, and in light of its findings and orders relating to the mandatory imposition of the death sentence, this Court considers that an alternative measure is warranted to give effect to the said findings and orders. The Court therefore orders the Respondent State to take all necessary measures, within one year of the notification of this Judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence, and which upholds the discretion of the judicial officer.[34]

iii. Publication of the Judgment

78. The Court considers that, in line with its established jurisprudence, and in the peculiar circumstances of this case, publication of this judgment is necessary. Given the current state of law in the Respondent State, threats to life associated with the mandatory death penalty persist in the Respondent State. The Court has not received any indication that necessary measures have been taken for the law to be amended and aligned with the Respondent State's international human rights obligations. The Court thus finds it appropriate to order publication of this judgment within a period of three months from the date of notification.

Tanzania (merits and reparations) (21 September 2018) 2 AfCLR 402, § 82 and *Juma v. Tanzania* (judgment), supra, § 165.

[34] *Rajabu and Others v. Tanzania*, *supra*, § 171 (xvi); *Juma v. Tanzania, supra*, § 174 (xvii); *Henerico v. Tanzania, supra*, § 217 (xvi); *Mwita v. Tanzania*, *supra*, § 184 (xviii).

iv. Implementation and reporting

79. The Parties did not make specific prayers in respect of implementation and reporting.

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80. The justification provided earlier in respect of the Court's decision to order publication of the judgment, notwithstanding the absence of express prayers by the Parties, is equally applicable in respect of implementation and reporting. Specifically in relation to implementation, the Court notes that in its previous judgments issuing the order to repeal the provision on the mandatory death penalty, the Respondent State was directed to implement the decisions within one (1) year of issuance of the same.[35] In subsequent judgments, the Court has granted the Respondent State a period of six (6) months to implement the same order.[36]

81. The Court observes that, in the present case, the violation of the right to life by the provision on the mandatory imposition of the death penalty goes beyond the individual case of the Applicants and is systemic in nature. The same applies to the violation in respect of execution by hanging. The Court further notes that its finding in this Judgment bears on a supreme right in the Charter, that is, the right to life.

82. Based on the foregoing, the Court deems it necessary to order the Respondent State to periodically report on the implementation of this judgment in accordance with Article 30 of the Protocol. The report should detail the steps taken by the Respondent State to remove the impugned provision from its Penal Code.

[35] *Crospery Gabriel and Another v. United Republic of Tanzania*, ACtHPR, Application No. 050/2016, Judgment of 13 February 2024 (merits and reparations), §§ 142-146; *Rajabu v. Tanzania* (merits and reparations), *supra*, § 171 and *Henerico v. Tanzania* (merits and reparations), *supra*, § 203.
[36] *Damian v. Tanzania*, *supra*; *Zabron v. Tanzania, supra; Crospery Gabriel v. Tanzania*, *ibid; William v. Tanzania*, *supra; Jeshi v. Tanzania*, *supra*.

83. The Court notes that the Respondent State has not provided any information on the implementation of its judgments in any of the earlier cases where it was ordered to repeal the mandatory death penalty and the deadlines that the Court set have since lapsed. In view of this fact, the Court still considers that the orders are warranted both as an individual protective measure, and a general restatement of the obligation and urgency behoving on the Respondent State to scrap the mandatory death penalty and provide alternatives thereto. The Court holds, therefore, that the Respondent State is under an obligation to report on the steps taken to implement this judgment within six months from the date of notification of this judgment.

X. COSTS

84. The Applicant did not make any submissions on costs.

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85. The Court notes that Rule 32(2) of its Rules provides that unless otherwise decided by the Court, each Party shall bear its own costs."

86. In this instant case, the Court does not find any justification to depart from the above provision and therefore rules that each Party shall bear its own costs.

XI. OPERATIVE PART

87. For these reasons:

THE COURT,

Unanimously and in default,

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Declares* that the Application is admissible.

On the merits

iii. *Holds* that the Respondent State did not violate the Applicant's right to a fair trial under Article 7(1) of the Charter;

By a majority of eight Judges for and two Judges against, Justices Dumisa B. NTSEBEZA and Blaise TCHIKAYA dissenting,

iv. *Holds* that the Respondent State violated the Applicant's right to life protected under Article 4 of the Charter in relation to the mandatory imposition of the death penalty by failing to allow the judicial officers discretion to take into account the nature of the offence and the circumstances of the offender;
v. *Holds* that the Respondent State violated the right to dignity and not to be subjected to cruel, inhuman or degrading punishment and treatment guaranteed under Article 5 of the Charter in relation to the imposition of the death penalty by hanging.

Unanimously,

On reparations

Pecuniary reparations

vi. *Does not grant* reparations for material prejudice.

vii. *Awards* the Applicant the sum of Three Hundred Thousand Shillings Tanzania Shillings (TZS 300,000) for moral prejudice suffered.

Non-pecuniary reparations

viii. *Dismisses* the Applicants prayer for release;
ix. *Orders* the Respondent State to revoke the death sentence imposed on the Applicant and remove him from the death row;
x. *Orders* the Respondent State to take all necessary measures to remove within six months of the notification of this Judgment the mandatory death penalty from its laws;

xi. *Orders* the Respondent State to take all necessary measures within one year of the notification of this Judgment, for the rehearing of the case on the sentencing of the Applicant through a procedure that does not allow the mandatory imposition of the death sentence and upholds the discretion of the judicial officer;
xii. *Orders* the Respondent State to take all necessary measures within six months of the notification of this Judgment to remove “hanging” from its laws as the method of execution of the death sentence.

On publication

xiii. *Orders* the Respondent State to publish this judgment, within a period of three months from the date of notification, on the websites of the Judiciary, and the Ministry for Constitutional and Legal Affairs, and ensure that the text of the judgment is accessible for at least one year after the date of publication.

On implementation and reporting

xiv. *Orders* the Respondent State to submit to it, within six months from the date of notification of this judgment, a report on the status of execution of the orders set forth herein and thereafter, every six months until the Court considers that there has been full implementation thereof.

On costs

xv. *Orders* that each Party shall bear its own costs.

Signed:

Modibo SACKO, Vice President;

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(3) of the Rules, the Declarations of Justice Blaise TCHIKAYA and Justice Dumisa B. NTSEBEZA are appended to this Judgment.

Done at Arusha, this Thirteenth Day of November in the year Two Thousand and Twenty-Four in English and French, the English text being authoritative.