



GODFREY GABINUS ALIAS NDIMBA & 2 OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 056/2019

JUDGMENT ON MERITS AND REPARATIONS

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 5 June 2026, The African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the case of *Godfrey Gabinus Ndimba & 2 Others v. United Republic of Tanzania*.

The Applicants are nationals of the United Republic of Tanzania (the Respondent State) who, at the time of filing their Application were incarcerated at Lindi District Prison in Lindi Region awaiting the execution of their death sentences after having been tried and convicted of murder. The Applicants alleged violation of their rights during proceedings before domestic courts.

The Court having noted that there were no pleadings on the record from the Respondent State first dealt with the question of rendering a judgment in default. Based on Rule 63(1) of the Rules of Court (the Rules), the Court noted that three conditions must be met before it can render judgment in default being: first, notification to the defaulting Party of both the Application and other documents pertinent to the proceedings; second, default of one of the Parties; and third, request made by the other Party or the Court acting of its own motion.

In applying these conditions, the Court established that the Respondent State had been duly served with the Application and all other pleadings in the matter and was thus properly notified of the proceedings. As for the default of the Respondent State, the Court noted that the Application had been served on the Respondent State which nevertheless failed to file a Response within the prescribed time and that even after being notified that a judgment in default would be rendered and being accorded a final extension of time to file its Response, the Respondent State did not file any pleadings. The Court, in the circumstances, concluded that the Respondent State had failed to defend the case within the prescribed time. Finally, the Court noted that although the Applicant had not requested for a judgment in default, the Rules permitted it to render



AfCHPR

African Court on Human
and Peoples' Rights

Arusha, Tanzania

Email: registrar@african-court.org

Website: www.african-court.org

Telephone: +255-272-510-510

JUDGMENT SUMMARY

such a judgment either *suo motu* or upon request. In the present case, the Court decided to render the judgment in default *suo motu* for the proper administration of justice.

Although this was a judgment in default, the Court, pursuant to Rule 49(1) of the Rules, nevertheless examined all aspects of its jurisdiction to ascertain that it had jurisdiction. With regard to its material jurisdiction, the Court concluded that its jurisdiction was established given that the Applicants were alleging violation of rights guaranteed in the African Charter on Human and Peoples' Rights (the Charter) and the International Covenant on Civil and Political Rights (the ICCPR), instruments ratified by the Respondent State. The Court also confirmed its personal jurisdiction given that the Respondent State had deposited the Declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) by which the Respondent State recognised the Court's jurisdiction to consider applications filed against it by individuals. In this regard, the Court noted that the Respondent State's withdrawal of the Declaration filed on 21 November 2019 did not deprive it of jurisdiction given that the withdrawal took effect on 22 November 2020 and did not affect this application which was filed on 22 October 2019. As for its temporal jurisdiction, the Court confirmed its jurisdiction given that the alleged violations commenced after the Respondent State had ratified the Protocol and continued after the Respondent State deposited the Declaration. The Court also confirmed its territorial jurisdiction given that all the alleged violations occurred within the territory of the Respondent State. The Court thus declared that it had jurisdiction in the matter.

The Court noted that pursuant to Article 6(2) of the Protocol, it must rule on the admissibility of all cases filed before it. Although it was a judgment in default, the Court, had to determine whether the Application complied with the admissibility requirements set out under Article 56 of the Charter which are restated in Rule 50(2) of the Rules.

The Court held that pursuant to Article 50(2) of the Rules, the Application had met the following conditions of admissibility: the Applicants had been identified by name in fulfilment of Rule 50(2)(a) of the Rules; the allegations by the Applicants sought to protect their rights in line with Article 3(h) of the objectives of the Constitutive Act of the African Union, and thus the Application complied with Rule 50(2)(b) of the Rules; the language used in the Application was not disparaging or insulting to the Respondent State or its institutions, in fulfilment of Rule 50(2)(c) of the Rules; and the Application was also not based exclusively on news disseminated through mass media, in fulfilment of Rule 50(2)(d) of the Rules.



AfCHPR

African Court on Human
and Peoples' Rights

Arusha, Tanzania
Email: registrar@african-court.org
Website: www.african-court.org
Telephone: +255-272-510-510

JUDGMENT SUMMARY

As regards exhaustion of local remedies, the Court found that the Applicants had appealed to the Court of Appeal, the highest judicial organ of the Respondent State, the decision of the High Court convicting them of murder. The Court of Appeal delivered its judgment on 28 February 2019, dismissing the Applicants' appeal. Accordingly, the Applicants had exhausted local remedies in compliance with Rule 50(2)(e) of the Rules. The Court further held that the Application which was filed seven months and 25 days following the judgment of the Court of Appeal was thus filed within a manifestly reasonable time in accordance with Rule 50(2)(f) of the Rules. The Court was also satisfied that the Application did not raise allegations already settled before another international tribunal. Resultantly, the Court declared the Application admissible.

On the merits, the Court had to decide whether the Respondent State had violated Articles 1, 3, 4, 5, 7 of the Charter. However, given that most of the Applicants' allegations concerned the violation of the right to a fair trial, under Article 7 of the Charter, the Court considered these allegations first.

In relation to the allegation that the Respondent State had failed to establish the Applicants' presence at the scene of the crime, the Court, while noting its limited role in assessing questions of evidence presented before domestic courts, held that the record demonstrated that the Applicants had been correctly identified and placed at the scene of the crime. As for the allegation that the Respondent State had fabricated the evidence against the Applicants specifically by mislabelling a post mortem report, the Court found that this was a general allegation which the Applicants had not substantiated. The Court thus found that the Applicants had failed to prove that their right to fair trial was infringed by reason of the alleged fabrication of the post-mortem report. As for the allegation that the Applicants' rights had been violated when the Respondent State did not provide each of them with a separate legal counsel and the allegation that the Applicants' right to cross examine state witnesses was compromised due to lack of individual counsel, the Court held that the right to be defended by counsel is not an absolute right. Further, the Court held that the State's duty is to provide an accused person with effective legal representation which does not necessarily require that each accused must have his own legal representative. The Court also found that there was nothing on record to demonstrate that the Applicants' legal representative had been compromised in representing the Applicants jointly. The Court further found that the Applicants' right to a fair trial was not violated by the fact that they had the same lawyer representing all of them. Overall, therefore, the Court held that the Applicants had failed to prove a violation of their right to a fair trial and thus dismissed all their allegations under this head.



AfCHPR

African Court on Human
and Peoples' Rights

Arusha, Tanzania

Email: registrar@african-court.org

Website: www.african-court.org

Telephone: +255-272-510-510

JUDGMENT SUMMARY

The Applicants also alleged that the Respondent State had violated their right to equality before the law and equal protection of the law under Article 3 of the Charter. They alleged that the violation was based on the prosecution's inability to prove their presence at the scene of the crime; the alleged unlawful admission of evidence in the domestic courts; the failure of the Respondent State to provide the Applicants with individual legal counsel; and the failure of counsel to ask the prosecution witnesses certain questions pertaining to the culpability of each of the accused persons. The Court reiterated that it is the duty of the person alleging a violation of the right to equality and equal protection before the law to lead evidence to substantiate such an allegation. In this case, the Court held that the Applicants had failed to provide the evidence to substantiate their allegations and thus dismissed their claims.

In connection with the Applicants' allegation regarding the violation of Article 4 of the Charter, the Court noted that the Respondent State's High Court had sentenced the Applicants to death under the mandatory sentencing regime. The Court, based on its established jurisprudence, found that the mandatory imposition of the death penalty violates Article 4 of the Charter. Equally, the Court found that the implementation of the death sentence by hanging violates Article 5 of the Charter.

Given the violations of Articles 4 and 5 of the Charter that had been established, the Court also found that the Respondent State had violated Article 1 of the Charter.

On pecuniary reparations, the Court did not make any findings on material prejudice given that the Applicants had not made any prayers in this regard. As for moral prejudice, the Court reiterated that this is presumed in cases of human rights violations and ordered that each of the Applicants be compensated with Tanzanian Shillings Three Hundred Thousand (TZS 300 000), on an equitable basis.

For the non-pecuniary reparations, the Court dismissed the Applicants' prayer for annulment of the criminal proceedings and reversal of their convictions. The Court also dismissed the prayer for the Applicants' release noting that no exceptional circumstances to justify their release had been established. However, given that the Applicants had been sentenced to death mandatorily, which the Court found to be contrary to Article 4 of the Charter, the Court ordered Respondent State to vacate the Applicants' death sentences and remove them from death row. The Court also ordered that the Respondent State to, without delay, amend its laws to remove the mandatory death penalty from its statute books. Further, the Court ordered the Respondent State to take all necessary measures, without delay, to amend its laws and remove "hanging" from its laws as the method of execution of the death sentence



AfCHPR

African Court on Human
and Peoples' Rights

Arusha, Tanzania

Email: registrar@african-court.org

Website: www.african-court.org

Telephone: +255-272-510-510

JUDGMENT SUMMARY

The Court further ordered the Respondent State to take all necessary measures, without delay, for the rehearing of the case on the sentencing of the Applicants, through a process that prevents the mandatory imposition of the death penalty, while upholding the full discretion of the judicial officer. Given the state of law in the Respondent State, especially with the mandatory death penalty, the Court ordered the publication of 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.

The Court also ordered the Respondent State to submit to it, within six months of notification, a report on the status of implementation of this Judgment detailing the steps taken by the Respondent State to comply with the terms of this Judgment.

Each party was ordered to bear its own costs.

Pursuant to Article 28(7) of the Protocol and Rule 70 of the Rules, Justice Blaise Tchikaya and Justice Dumisa B. Ntsebeza issued Declarations on the issue of the death penalty.

Further information:

Further information on this case, including the full text of the African Court's judgment, is available on the website: <https://www.african-court.org/cpmt/details-case/0562019>

For any further questions, please contact the Registry via the following e-mail address: registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes brought before it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the State concerned. For more information, please visit our website: www.african-court.org