

**SUMMARY OF THE CASE IN APPLICATION NGUZA VIKING (BABU SEYA),  
1<sup>ST</sup> APPLICANT AND JOHNSON NGUZA (Papi kocha), 2<sup>nd</sup> Applicant) v.  
UNITED REPUBLIC OF TANZANIA, APPLICATION No. 006/2015**

**1. Summary of the facts**

The Applicants, Mr. Nguza Viking and Mr. Johnson Nguza are citizens of the Democratic Republic of Congo and lived and worked as musicians in Dar es Salaam, Tanzania. The second Applicant (Johnson Nguza) is the first Applicant's (Nguza Viking) biological son. All applicants were arrested on 12th day of October, 2003 and transferred to the Magomeni Police Station. The Applicants and another person (later known as a teacher) were arraigned before the Resident Magistrate Court of Kisutu (Dar es Salaam) on 16th day of October, 2003 and were charged with 10 counts of rape and 11 counts of sodomy. They pleaded not guilty to all charges. The ten alleged victims were all children between six and eight years old and were from the same classes. It was alleged that they were gang raped and sodomized in turns by four adults. After a full trial, the Court ruled on the matter on 25th day of June, 2004, in favor of the prosecution and sentenced the Applicants to serve a term of life imprisonment. Only the fifth accused, the teacher, was acquitted. The Applicants appealed to the High Court of Tanzania but the appeal was dismissed. They appealed to the Tanzania Court of Appeal and two other accused in the trial were acquitted, but both Applicants' sentences were upheld on four remaining rape charges. After the appeal of the Applicants was dismissed by the Tanzania Court of Appeal, they filed for an application for review that was later dismissed. The applicants state they have exhausted all local remedies.

**2. Alleged violations**

The Applicants allege that the Respondent state violated Article 1, 2, 3, 5, 7(1)b), 13 and 18(1) of the African Charter on Human and Peoples' Rights. They submit that after the arrest, they were not promptly informed of what charges they were

being arrested for and were put under restraint for four days incommunicado without access to a lawyer or anyone else. Further, while they were in custody, the Applicants claim to have been mistreated by police officers who notably insulted them. Only after having spent some time in police custody, a police officer informed them that they were charged with rape.

According to the Applicants, the trial was unjustified for various reasons: the Court repeatedly dismissed requests to submit evidence, the results of the blood and urine test underwent by the Applicants were not presented as evidence in the trial Court, even while the alleged victims claimed to be infected with HIV/AIDS and Gonorrhoea, the first Applicant's request to test his impotence, and therefore his material impossibility to participate in the commission of the alleged crimes, was rejected. Further, they state that the Court used statements of the alleged victims as evidence, where they described from their memory the room where the rape took place, but the Court did not give consideration that these children and their parents visited the Applicants' house before the hearing and studied the room several times. Further, the Applicants allege that the charges were fabricated in revenge by the former partner of the first Applicant, who was envious of his new engagement.

According to the Applicants, the judgment was not based on strong evidence: the Court deliberately did not call material witnesses in the scene of the crime, the medical report tendered in Court by the prosecution contradicted the evidence adduced in Court by the alleged victims of rape and sodomy and the defense called 31 witnesses, but this evidence of the defense was not given enough consideration by the Court. Further, in the Appeal, six counts of rape and the charges of sodomy were dismissed, even though the remaining counts of rape were alleged to have been committed at the same material time and place, and the evidence brought by the prosecution was similar to the other charges.

According to the Applicants, their right to a fair trial was violated: the charges lacked the dates on which the alleged offences were committed, therefore disabling the Applicants to prepare for their defense, and the Court relied on prosecution evidence which was uncorroborated and had too many

inconsistencies to convict both Applicants. The Applicants allege that the Tanzanian Government, through their officials' actions, violated all accepted principles of human rights and international law.

### **3. Prayers to the Court**

The Applicants state that the Court should rule that their rights were violated. They request the Court to facilitate them with free legal representation or legal assistance and request the Court to appoint experts to provide clarification of the facts of the case and assist the Court in carrying out its task. The Applicants request an order compelling the Respondent state to release the Applicants from custody and request reparation and any order or remedy that the Court may deem fit to grant.