

IN THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

AT ARUSHA, TANZANIA

APPLICATION NO...020...OF 2016

C/F FROM THE COURT OF APPEAL OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO.120 OF 2012

ARISING FROM THE HIGH COURT OF TANZANIA AT MWANZA

IN CRIMINAL APPEAL NO.01 OF 1998

AND,

C/F FROM THE DISTRICT COURT OF MULEBA AT KAGERA REGION

IN ORIGINAL CRIMINAL CASE NO.123 OF 1997

ANACLET S/O PAULO APPLICANT

VERSUS

1. THE UNITED REPUBLIC OF TANZANIA }
2. ATTORNEY GENERAL }RESPONDENTS

EXECUTIVE SUMMARY OF THE APPLICATION

(MADE UNDER RULE 19 OF THE COURT'S RULES AND PROVISION 17 OF THE COURT'S PRACTICE DIRECTIONS)

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS.

This application is for the following requests:-

1. **THAT**, this court may be pleased grant the applicant to lodge memorandum of complaints of violation of fundamental human rights and justice.
2. **THAT**, I am an inmate serving thirty (30) years custodial sentence at Butimba central prison – Mwanza, Tanzania. My imprisonment sentence emerged from the above mentioned criminal case whereby I (the applicant) was persecuted to offend / commit Armed Robbery contrary to section 285 and 286 of the Tanzania penal code cap16, (R:E 2002) as amended by Act No.10/1998. This mishap started on 28th.07.1997 when I was found a sleep at my home before being arrested and restrained by a group of policemen accompanied by vigilantes who later on, I was taken to Nshamba Police post and then to Muleba police station whereon I was informed of my being suspected to commit armed robbery at PW1'S premises, of which, after a full trial before Muleba district court, the applicant was found guilty, hence being convicted

and sentenced to thirty (30) years in jail albeit I was denied to the aligned charges.

3. **THAT**, the charge sheet in respect of criminal case no.123 of 1997 was read over, and plea of not guilty entered then the applicant's was unsuccessful applied for bail pending his trial whereby contrary to the justice and unconstitutional (as per article 13 and 15 of the constitution of the united Republic of Tanzania, 19~~7~~7 and Article 3, 1 and 2, and Article 6 of the charter of this court) the respondent state court supra refused the applicants basic rights to be bailed. So the applicant was attending the court session from remand prison.
4. **THAT**, aggrieved the applicant was unsuccessful appealed in the High court of Tanzania at Mwanza vide HC. CR. Appeal no.01 of 1998, before the original record of court proceeding vide cr. Case no.123 of 1997 (supra) proved to be lost/missing within the courts registry since on 4.6.2009 see annexure AP "1", at page 1 and 2, also at page 42, 43/3, and 44/4 appended herein. In the event, the high court judge and the court of appeal of the respondent state) ought have not prosecuted / conduct the applicants appeal in his absence, and without the presence of the original court record of proceeding to meet the equality of justice before the law to both interested (adverse) parties i.e the applicant and the respondent state.
5. **TAHT**, in thus, the whole process of appeal into court not only was attained in my absentia but also it was made using an importation of external material which presumed to be a certified true copy from the original court record to replace the lost / missing one; without warning itself (the courts) of the danger of tampering with evidence in favour of the complainants (victim). So, this aspect was made in contravention of article 13(6),(a) and 18(a) of the constitution of the united republic of Tanzania, 19~~7~~7 also article 3, 1 and 2, 7,1(a) and (c) and article 9, 1 and 2 of the charter of this court of human and peoples' rights.
6. **THAT**, originally, the applicant was charged under section 285 and 286 of the Tanzania penal code cap16 (R:E 2002) vide cr. case no.123 of 1997 within the District court of Muleba, whereby in that time, its legal sentence ought

have meted to fifteen (15) years imprisonment but the sentence of thirty (30) years in jail was imposed upon the applicant which is unconstitutional and violation of the basic rights under article 13 (6), (c) of the constitution of the United Republic of Tanzania, 1977 and article 7 (2) of the charter to the African court which enshrined that no person should be inflicted with a sentence when the crime / offence committed that sentence was not enforced.

7. **THAT**, exhausted with local remedies as effort to fight for my basic rights to be heard before the court of law hitting a snag; (from the first instance to the appellate stages) for the entire process of appeal into court was abnormal thus; obviously the applicant is isolated by illegality and irregularity of proving and/or process of determining of the case/appeal under the shadow of equality before the law as adopted by the respondent state court (supra) who shift the onus of extracting court proceeding (records) to the complainant/prosecution thus lead to injustice in terms of charter of this court and the constitution of the united Republic of Tanzania, 1977.
8. **THAT**, during my first and second appellate stages, I was without legal representative though I did to my level best to prove my innocence, but unfortunately, despite my effort bore no fruits because my rights were deprived thus leading to injustice. This position has violating fundamental rights of the charter of this court to article 7 (1), (c).
9. **THAT**, my request to this court is to intervene due to unconstitutional and violation of fundamental rights done against the applicant by the judicial hierarchy of the respondent state court.
10. **THAT**, this court is pleased to grant the applicant prayer to be facilitated with free legal representative or legal assistance under article 10 (2) of the protocol of the court and rule 31 of the rules of this court.
11. **THAT**, the applicant wishes to be granted reparation pursuant to article 27 (1) of the protocol of the court and rule 34 (5) of the rules of the court in order to remedy the violation.
12. **THAT**, this court on Human and Peoples' rights may grant any other order(s), or relief(s) that may deem fit and just to grant in the circumstances of complaints.

13. THAT, this application of complaints of violation of human rights and justice being in executive summary is hereby accompanied (attached) by the tampered record of proceeding imported from the complainant (page 44/4 reveals) presumed to be a certified true copy from the original, and the judgment of the highest court of appeal of the country .

This application has been drawn by the applicant at Butimba central Prison at Mwanza Tanzania and signed by himself on...23rd...the 23rd day of...MARCH...2016

(RTP)

APPLICANT
(ANACLET S/O PAULO)

VERIFICATION: I hereby verify that this application has been drawn by the applicant himself and endorsed before me this...WEDNESDAY...day of...MARCH...2016.

(SGD).....Handwritten Signature.....
For: OI/C BUTIMBA CENTRAL PRISON
P.O. BOX 38,
MWANZA, TANZANIA

MKUU WA GEREZA
BUTIMBA MWANZA

LODGED at the Registry office of the African Court on Human and Peoples' Rights P.O. BOX 6274 Arusha, Tanzania this.....day of.....2016.

(SGD).....
THE REGISTRAR OF THE COURT
(ACHPR – ARUSHA, TANZANIA)

SERVED UPON:

THE RESPONDENT STATE
C/O ATTORNEY GENERAL,
ATTORNEY GENERAL CHAMBERS,
P.O. BOX 11492,
DAR – ES – SALAAM, TANZANIA

DRAWN AND FILED BY:

ANACLET S/O PAULO
C/O OI/C BUTIMBA CENTRAL PRISON
P.O. BOX 38,
MWANZA, TANZANIA

23rd . 03 . 2016