

**ALEX THOMAS**  
**VS**  
**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 005/2013**

**DISSENTING OPINION**  
**JUDGE ELSIE N. THOMPSON, VICE PRESIDENT**

**JUDGE RAFÂA BEN ACHOUR**

1. We agree substantially with the merits of the judgment of the Court but there is one particular issue on the Order at paragraph 159 which we would approach in a different manner and make a specific order.
2. The Applicant alleges violation of several articles of the African Charter on Human and Peoples' Rights which have been set out in the judgment and he seeks amongst other reliefs, that he be released from prison.
3. The Court in its wisdom finds infractions of Articles 1, and 7(1) (a), (c) and (d) of the Charter and Article 14(3)(d) of the ICCPR based largely on lack of fair hearing and then orders the State to:

"...take all necessary measures within a reasonable time to remedy the violations found, specifically precluding the reopening of the defence case and the retrial of the Applicant, and to inform the Court, within six (6) months, from the date of this judgment of the measures taken".

4. On the specific issue as to the Order of his release, the Court opines and we entirely agree that an Order of release of a convict



can only be done in “very specific/and or compelling circumstances”. The Court, however goes further to say that the Applicant has not shown exceptional circumstances and this is where we depart.

5. In spite of the fact that the Application does not state that particular facts exhibit exceptional circumstances, we are of the firm view that the Court found such specific/and or compelling circumstances when it noted that the Applicant has been in prison for 20 years out of the 30 year term of imprisonment and that the reopening of the defence case or a retrial “would result in prejudice and occasion a miscarriage of justice.”
6. We cannot find a more “specific and/or compelling” than that the Applicant has been in prison for about 20 years out of a 30 year prison term following a trial which the Court has declared to be an unfair trial, in violation of the Charter.
7. Furthermore, there is the recognition that the reopening of the defence or a retrial “would result in prejudice and occasion a miscarriage of justice.”
8. The Court fell shy of making the Order of releasing the Applicant. Our view is therefore that, there is no other remedy in the circumstance other than, that the Applicant be released.
9. In the circumstance of the case, rather than leaving the issue to the imagination of the Respondent, we would have granted the relief and ordered that the Applicant be released.

Done at Arusha this twentieth Day of November 2015

Judge Elsie N. Thompson – Vice President

Judge Rafâa Ben Achour

