



Arusha, Tanzania
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**PRESS RELEASE
JUDGMENT SUMMARY**

LUCIEN IKILI RASHIDI V. UNITED REPUBLIC OF TANZANIA

APPLICATION NUMBER 009/2015

JUDGMENT ON MERITS AND REPARATIONS

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS IN A HUMAN RIGHTS CASE ARISING FROM TANZANIA

Date of Press Release: 28 March 2019

Arusha, 28 March 2019: Today, the African Court on Human and Peoples' Rights (the African Court or the Court) delivered judgment in the case of *Lucien Ikili Rashidi v. United Republic of Tanzania*.

Mr. Lucien Ikili Rashidi, the Applicant in this case, is a national of the Democratic Republic of Congo (DRC) who lived in Dar es Salaam, United Republic of Tanzania. He currently lives in Bujumbura, Republic of Burundi. The facts of the case date back from 2006 when the Applicant, his wife and children were arrested, detained and deported for allegedly residing illegally in Tanzania. After seeking remedies for his arrest and the treatment that ensued, the Applicant filed an Application before the African Court alleging the violation of his rights to residence and movement, to dignity and to be tried within a reasonable time as provided for in Articles 12, 4, 5 and 7 of the Charter, respectively. The Applicant also submitted that such violations ought to be rectified pursuant to Article 27(1) 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).

The Respondent State raised an objection regarding the jurisdiction of the Court. In accordance with its Rules, the Court found that it had jurisdiction in all respects as follows: material jurisdiction, since the Applicant alleged violations of provisions of the Charter to which the Respondent State is a party; personal jurisdiction, on the basis that the Respondent State is a party to the Protocol and has made the declaration prescribed under Article 34(6) thereof, which enabled the Applicant to bring the case directly before the Court; temporal jurisdiction, given that the alleged violations were continuing; and lastly, territorial jurisdiction, since the facts of the matter occurred within the territory of the Respondent State.

As regards the admissibility of the Application, the Court examined the objections raised by the Respondent State. On the objection related to failure to exhaust local remedies, the Respondent State averred that the Applicant did not attempt to exhaust the remedies that were available to challenge his prohibited immigrant status, which was to request the Minister of Home Affairs for

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the waiver of the Notice of Prohibited Immigrant to allow him return to Tanzania and pursue his cases pending before domestic courts. The Applicant on his part alleged that the said remedies were not made available to him since he had been expelled from Tanzania and his requests to the Ministry of Home Affairs and High Court to enable him access relevant remedies remained without response.

In dealing with those two issues relating to admissibility, the Court, relying on its case-law, held that the requirement set out in Article 56(5) of the Charter is to exhaust remedies that exist and which are available, that is, those that can be used by the Applicant without impediment. The Court took the view that, in this case, the lack of response from both the Minister of Home Affairs and the High Court resulted in the Applicant being unable to return to Tanzania and to file an appeal in the case on the legality of his stay. The Court consequently dismissed the Respondent State's objection relating to exhaustion of local remedies.

The Respondent State also raised an objection on the failure of the Applicant to file the case within a reasonable time from the exhaustion of local remedies. It argued that the time of over one year that it took the Applicant to file the Application is beyond the standard of six (6) months which is applicable in international human rights case-law. In response, the Applicant submitted that having filed requests with the above mentioned authorities, he obviously awaited responses before considering his next step. The Applicant averred that the delay alleged by the Respondent State was as a result of that wait. In making a determination on this point, the Court again referred to its consistent case-law that the standard of six (6) months expressly provided for in some other international adjudicatory forums does not apply before the Court given that Article 56(6) of the Charter prescribes only for a "reasonable time". The Court then restated its jurisprudence that assessment of such time must be made on a case-by-case basis, which in the circumstances of the case, led to the conclusion that the considered time was reasonable. The Court proceeded to declare the Application admissible.

Having found that it had jurisdiction and that the Application was admissible, the Court examined the violations alleged by the Applicant. On whether there was a violation of the right of freedom of movement, the Court first determined that, even though he did not have a passport and visa at the time of his arrest, the Applicant held a certificate of loss delivered by the Tanzanian police and that document had a probative value. In making that determination, the Court mainly based its reasoning on the principle of legitimate expectation by which the Tanzanian immigration authorities ought to have afforded some value to the certificate of loss which was issued by Police pending the replacement of his passport and visa. Having found that the Applicant's right to reside in Tanzania was violated, the Court found a consequential violation of his right to movement due to his arrest, both findings resulting in the violation of Article 12(1) of the Charter.

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Regarding the alleged violation of the Applicant's right to dignity, the Court stressed the grave nature of breaches to dignity. The Court dismissed the Respondent State's submission that the anal search that the Applicant underwent is common at entry in prisons in Tanzania because such systematic practice cannot justify the breach. While acknowledging that searches might be necessary for safety in prisons, the Court set out standards for such practice which must always respect dignity and can be conducted only on a case-by-case basis depending, among others, on the nature of the offence, and within judicial check as well as in compliance with international human rights standards. The Court found that, in the case of the Applicant who was merely accused of not holding proper documents and did not pose any security threat, the anal search was a breach not only to his dignity but also to his integrity. The Court thus found the Respondent State in violation of Articles 4 and 5 of the Charter.

Lastly, with respect to the alleged violation of the right to be tried within a reasonable time, the Court held that the time of six (6) years and four (4) months that it took the High Court to complete the case concerning the legality of the Applicant's stay in Tanzania cannot be considered a reasonable time to deliver justice. The Court based its reasoning and finding on the situation of the Applicant, namely the fact that the Respondent State had full cognizance of his status and had previously undertaken an expeditious procedure to expel him. Based on these considerations, the Court took the view that the Respondent State did not therefore require more than six (6) years to finalise a case on the legality of the Applicant's stay.

The Applicant made several prayers for reparations and given that it found violations, the Court examined the prayers and made the following determination based on its case-law on reparations. With respect to pecuniary reparations, the Court did not grant the prayers for compensation due to material loss, and arbitrary prosecution based either on the fact that the Respondent State withdrew the case of illegal residence or the fact that the claims were excessive or not supported with evidence. Conversely, the Court granted the Applicant the amount of Tanzania Shillings Ten Million (TZS 10,000,000) and each of his family members the amount of Tanzania Shillings One Million (TZS 1,000,000) for the moral prejudice suffered as a result of the violation of the Applicant's rights to dignity and integrity. In a novel move, and regarding non-pecuniary reparations, while it did not grant the Applicant's prayer for non-repetition of the violations, the Court, based on the systemic nature of the violation, ordered the Respondent State to take all necessary measures to ensure that cavity searches are conducted in strict compliance with the international obligations of the State and principles set out in the Judgment. Finally, the Court ordered the Respondent State to publish the Judgment on the websites of the Judiciary and the Ministry of Justice and Constitutional Affairs for a period of at least one (1) year; and file a report on implementation of the judgment to the Court within six (6) months.



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Further information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at <http://en.african-court.org/index.php/56-pending-cases-details/874-app-no-009-2015-lucien-ikili-rashidi-v-united-republic-of-tanzania-details>

For any others queries, please contact the Registrar by email to registrar@african-court.org and africancourtmedia.org.

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