

African Court Jurisprudence: Alex Thomas v United Republic of Tanzania

By Harriet Page

Periodically, ARC reviews the jurisprudence of the African Court of Human and Peoples' Rights. In respect of Application No 005/2013, Alex Thomas v United Republic of Tanzania, the following case summary has been prepared by Harriet Page on behalf of ARC.

Application

In an Application dated 2 August 2013 the Applicant describes himself as a convict serving a 30-year custodial sentence at Karanga Central Prison in the Kilimanjaro Region. His sentence began on 3 June 1998. The Applicant is suing the Attorney General and Chief Justice of the United Republic of Tanzania. The Respondent is the United Republic of Tanzania.

The Applicant alleges that there was an undue delay in consideration of his request for review of the Court of Appeal decision on 29 May 2009 which upheld his conviction of armed robbery/robbery with violence from the Trial Court on 30 June 1997.

The Applicant also alleges that both the Trial and then Appellate Courts erred in convicting him for the following reasons:

1. That the Tanzanian courts lacked jurisdiction to try him as the alleged robbery occurred in Kenya.
2. That his right to be heard had been violated as the Trial court proceeded to hear the case in his absence, as he was hospitalized at the time of trial.
3. That he was not provided with an advocate to defend him (right to free legal assistance), as required by Article 13 of the Constitution of the United Republic of Tanzania.
4. That the prosecution did not prove their case against him beyond reasonable doubt. The Applicant alleges that there were inconsistencies in the prosecution evidence, in particular the witness testimonies regarding the property actually stolen and its value, as well as, whether or not the Applicant attacked the complainants with a gun.

The Applicant requested that the Court quash the decisions of the Trial and Appellate Courts and that he be acquitted.

The Applicant also sought a declaration that the Respondent State had violated the Applicant's rights as guaranteed under Articles 1, 3, 5, 6, 7(1) and 9(1) of the African Charter on Human and Peoples' Rights. Further, the Applicant sought an order compelling the Respondent State to release him from detention, an order for reparations and an order compelling the Respondent State to report to the Court every 6 months on the implementation of its decision.

The Criminal Cases which the Applicant refers to are:

- Criminal Case No. 321' 1996 In the District Court of Rombo at Mkuu
- Criminal Appeal No. 82'1998 In the High Court of Tanzania at Moshi
- Criminal Appeal No. 230' 2008 Court of Appeal of Tanzania at Arusha

The Respondent argued that the Application be dismissed as it had not met the admissibility requirements and did not therefore trigger the jurisdiction of the African Court of Human and Peoples' Rights. The Respondent also sought an order for the Applicant to bear the costs of the Application.

The Respondent sought the following orders from the Court, namely that the Government of the United Republic of Tanzania had not violated the Applicant's right to be heard or violated the Applicant's right to defend himself or violated the Applicant's right to liberty.

The Respondent also argued that all aspects of the prosecution of the Applicant's case were conducted lawfully and that the prosecution had proved its case against the Applicant beyond a reasonable doubt. The Respondent also argued that there had been no delay of justice in respect of the Applicant.

Decision on the admissibility of the case:

In regards to the Respondent's argument that the Court lacked jurisdiction because the Applicant had improperly cited Articles 5 and 34(6) of the Protocol and Rule 33 of the Rules of Court, the Court found that as long as the rights allegedly violated are protected by the Charter or any other human rights instrument ratified by the State concerned, the Court will have jurisdiction over the matter. This issue was first discussed in *Application Number 001/2012 of Frank David Omary and Others v United Republic of Tanzania* where the Court held that the substance of the Application must relate to rights guaranteed by the Charter but it is not necessary that the rights alleged to have been violated are specified in the Application. Therefore, the Court rejected the Respondent's argument and found that it had jurisdiction *ratione materiae*.

The Court also rejected the Respondent's objection to the Application on the grounds of its incompatibility with the Charter of the Organisation of African Unity.

Further, the Court rejected the Respondent's argument that the Applicant had not exhausted domestic remedies. In addition, the Court found that the Applicant had made the Application within reasonable time after the exhaustion of local remedies given his situation and that he was imprisoned.

Decision on the merits of the case:

The Court found that the Applicant was denied the right to be heard and to defend himself in respect of Criminal Case Number 321 of 1996 as he was hospitalised at the time of his trial. A significant factor in the Court's decision was that the Trial Court had previously given the Applicant bail on the basis of his ill-health. Therefore, the Court was aware of his health and also the fact that he had never been prosecuted for breaking bail conditions.

The Court also found that there were "systematic and prolonged" delays to the Applicant's determination of his appeal to the Court of Appeal emanating from the original Criminal Case Number 321 of 1996.

The Court held, in regards to the Application's allegation that his right to free legal assistance was violated, that the Applicant was not only entitled to legal aid but should not have needed to even request it. The fact that the Applicant was of ill health and being charged with a serious offence only added to the Court's view that the Respondent State should have provided the Applicant with legal aid.

The Court found that the inconsistencies within the evidence would not amount to a denial of the Applicant's right to a fair trial. However, the Court did state that the failure to determine the issue of the ownership of the alleged stolen property and the discrepancies of the description of property were violations of a fundamental nature and adversely affected the Applicant's right to a fair hearing at the Trial and Appellate Courts.

The Court found that, as the Applicant was denied the right to be heard, the right to defend himself and that he was not given legal assistance, the Respondent had violated its obligation under Article

1 of the Charter. In regards to the Applicant's contention of the Respondent's violation of Article 3 of the Charter (the right to equality before the law and equal treatment of the law), the Court found that more substantiation was required.

In relation to the Applicant's contention that the Respondent's violated Article 5 of the Charter (prohibition against torture), the Court found that the Applicant had not proved this allegation. The Court also found that the alleged undue delay in the hearing of the Applicant's appeal did not result in a violation of the right to liberty and security of his person (Article 6 of the Charter). The Applicant had also alleged that the Respondent had violated his right to receive information under Article 9 of the Charter, however, the Court found that there was no such breach.

In his Application, the Applicant requested to be released from prison. The Court stated that the Applicant had not set out the specific or compelling circumstances that are required for the Court to grant his release. The Court noted that a possible remedy given the circumstances would be to order a reopening of his case. However, given that 20 of the 30 years have been served so far, the Court determined that this would result in a miscarriage of justice. Instead, the Court ordered the Respondent State to take "appropriate measures to remedy the violations" whilst taking into account the breaches that had occurred.

Costs:

The Court unanimously held that the Application was admissible. It is also held unanimously that there was no violation of Article 3, 5, 6, 7(1)(b) and 9(1) of the Charter but that there was a violation of Articles 1, 7(1)(a),(c), and (d) of the Charter and Article 14(3)(d) of the ICCPR.

By a vote of six to two, the Applicant's release from prison was denied.

It was unanimously held that the Respondent State must take all necessary measures within a reasonable time to remedy the violations found, but reopening the defence case and retrial of the Applicant is precluded. The Court must also be informed within 6 months from the date of judgment what measures have been taken.

It was held unanimously that the Applicant must file a request for reparations within 30 days and that the Respondent must reply within 30 days of the Applicant's submissions.

Dissenting Opinion of Judge Elsie N. Thompson and Judge Rafea Ben Achour:

Judge Thompson and Judge Achour argued that the Applicant should be released from prison as they held that the Applicant had in fact demonstrated the specific and/or compelling circumstances required for his release.

The compelling reason was that the Applicant had been in prison for 20 of the 30 years prison term following a trial which the Court deemed to be an unfair trial and in violation of the Charter.

Both argued that the Applicant should have been released rather than allowing the Respondent to remedy the situation by taking appropriate measures.

Commentary:

The Respondent has applied for interpretation of the judgment in order to have clarification on the measures it is required to take to implement the Order of the Court. The Court will decide on the same shortly.