

## **CASE SUMMARY**

### **APPLICATION NO. 003/2012**

#### **PETER JOSPEH CHACHA V THE UNTED REPUBLIC OF TANZANIA**

1. The Applicant, a Tanzanian national, has filed the application on the basis of proceedings in Criminal Cases Number 915/2007, 931/2007, 933/2007, 1027/2007, 1029/2007, 883/2008, 712/2009 and 716/2009 in the District Court of Arusha, The United Republic of Tanzania (Criminal Cases).
2. He alleges that he has been unlawfully arrested, interviewed, charged and detained and his property unlawfully searched and seized, contrary to the Criminal Procedure Act Chapter 20 of the Laws of Tanzania (CPA) and the Constitution of the United Republic of Tanzania, to freedom and the guarantee that such freedom shall only be deprived under circumstances and in accordance with procedures prescribed by law.
3. The Applicant also alleges that the police contravened the procedure for the search and seizure of property as set out in Sections 38(1), (2) and (3) of the CPA, in relation to his property.
4. The Applicant maintains that the fact that the Criminal Cases against him are pending does not preclude the Applicant from enforcing his Constitutional rights and his Charter rights. He alleges that there have been violations of his rights as guaranteed under the Constitution of the United Republic of Tanzania and as enshrined in Articles 3, 5, 6, 7(1), 14 and 26 of the African Charter. This is through the numerous, frivolous and unfounded cases against him, being subjected to cruel, inhuman and degrading treatment and punishment and denial of his right to liberty through arbitrary and prolonged detention. The Applicant also alleges that his right to a fair and expeditious trial has been violated through non-constitution of a three-judge bench to hear his Constitutional Petition No. 16 of 2011, being charged with numerous cases based on the same facts, with some being withdrawn and some of the charges being non-bailable offences, this being done to frustrate the Applicant and preventing him from preparing a proper defence. With respect to Criminal Cases Numbers 933 of 2007 and 712 of 2009, the Applicant alleges that he was denied the right to be tried within a reasonable time. He states that his efforts to seek redress before the municipal courts were fraught and hindered by complexities and unnecessary technical difficulties. The Applicant contends that the Respondent allowed its judicial system to be manipulated and abused to further injustice on the Applicant.
5. The Applicant states that the Court has jurisdiction to deal with the matter since there have been violations of his fundamental rights as provided for in the

Constitution of the United Republic of Tanzania and the Charter to which Tanzania is a state party as well as to the Court's Protocol and even making the declaration required under Article 34(6) thereto. On admissibility, the Applicant states that local remedies that the Respondent alleges he has not exhausted have been unavailable, inordinate and unduly prolonged.

- i. The Applicant also seeks a declaration that the that the Respondent is in violation of the above mentioned provisions of the Charter,
  - ii. The Applicant asks that his property be restored and he be adequately compensated for damage and loss.
  - iii. The Applicant seeks reparation.
  - iv. The Applicant seeks any order the Court may deem fit to grant.
6. The Respondent raises a preliminary objection regarding the Court's jurisdiction *ratione materiae*. The Respondent maintains that the Application does not relate to the application and interpretation of the Charter, the Protocol or any other relevant human rights instrument ratified by the United Republic of Tanzania as required by Article 3 (1) of the Protocol and Rule 26 of the Rules of Court rather, that the application is based on the Constitution of the Respondent as well as national legislation such as the CPA on which the Court cannot adjudicate. The Respondent contends that should the Court adjudicate on the matter, it will usurp the powers of municipal courts.
7. The Respondent states that Criminal case No. 3 of 2009 being heard at the High Court in Arusha in respect of which the Applicant is charged with murder, Criminal case No. 716 of 2009 being heard at the District Court of Arusha in respect of which one of the counts against the Applicant is for armed robbery and Criminal case No. 712 of 2009 instituted in the Resident Magistrate Court of Arusha and in which the Applicant is charged with robbery with violence , all of which form the basis of the Application are yet to be concluded. On this basis, the Respondent requests the Court to 'reject the application *de plane*'.
8. In the Alternative, the Respondent is challenging the admissibility of the Application on the grounds of incompatibility with the Charter of the Organisation of African Unity/Constitutive Act of the AU and the Charter for non-exhaustion of local remedies that are effective, adequate, fair and impartial that the Applicant should have exhausted. Alternatively and without prejudice to the contention of non-admissibility of the application for non-exhaustion of local remedies, the Respondent argues that the application has not been filed within a reasonable time from the period when local remedies were exhausted vis-à-vis his petitions to the High Court.

9. On the merits, the Respondent submits that the right to personal freedom is not absolute and is subject to other provisions of the law, rights and obligations which apply in the instant case as the Applicant was lawfully arrested and placed in remand in line with article 15(2)(a) and 30 of the Constitution of the United Republic of Tanzania. The Respondent also maintains that there was no contravention of the CPA in relation to the arrest, interviewing, detention and arraignment of the Applicant and the search and seizure of his property.

10. The Respondent prays the Court to give/grant the following orders:

- i. That the Applicant has not invoked the jurisdiction of the Court as per Rule 26(1)(a) if the Rules of Court and Article 3(1) of the Protocol Establishing the Court.
- ii. That the Application should be dismissed as it has not met the admissibility requirements under Rule 40 of the Rules of Court, Article 56 of the Charter and Article 6(2) of the Protocol
- iii. That the Government of the United Republic of Tanzania has not violated the Applicant's right to own property
- iv. That the Government of the United Republic of Tanzania has not violated the Applicant's right to personal freedom
- v. That the investigation of all the cases facing the Applicant in the municipal; courts was in accordance with the law
- vi. That the Respondent has not violated the new Articles 3,5,6,7(1), 14 and 26 of the African Charter
- vii. That the Applicant is not entitled to the reliefs, reparations and compensation claimed as none of his rights have been infringed by the Respondent.
- viii. That the investigation and subsequent prosecution of all cases facing the Applicant in the Municipal Courts was/is being done in accordance with the laws.
- ix. That the Application be dismissed in accordance with Rule 38 of the Rules of Court.
- x. That the costs of this Application be borne by the Applicant
- xi. That this Application has no merit
- xii. That the Application be dismissed in accordance with Rule 38 of the Rules of Court
- xiii. That the costs of the Application be borne by the Applicant
- xiv. Any other orders or relief(s) the Court may deem fit.