

Reference No. 2 of 2020 Tito Elias Magoti & Theodory Faustin Giyan v. The Attorney General of United Republic of Tanzania

Coming up for hearing on: 4th April, 2023

Reference filed on: 19th February 2020

Articles: 6(d) and 7(2) of The Treaty

Rules: 25 of the EACJ Rules of Procedure, 2019.

Subject matter: Alleged arbitrary arrest and detention.

The Applicants allege that the in December 2019 at diverse times they were abducted and held at unknown location by agents of the Respondent without allowing them to communicate to their families or lawyers and on 24th December 2019 arraigned in court, charged, denied a right to bail as a matter of law and detained on holding charges only.

The Applicants allege that the said acts by the Respondent did not comply with the fundamental principles that govern the achievement of the objectives of the community including inter alia the principles of “Good governance including the adherence to democracy, rule of law, accountability, transparency as well as the recognition, promotion and protection of Human and People’s Rights in accordance with the provisions of the African Charter on Human and people’s rights under Articles 6(d) and 7(2) of the Treaty.

The applicants pray that Section 148(5) of the Criminal Procedure Act and Section 36(2) of the Economic and Organized Crime Control Act CAP. 200 that make economic crimes non bailable be declared by the Court as inoperative, null and void for contravening Articles 6(d) and 7(2) of The East African Treaty.

The Respondent disputes all the allegations made by the Applicants in respect of the purported arbitrary arrest, denied communication to Applicants to their family or lawyers, denied right to seek bail and further states that the Applicants were arrested and charged in accordance with the Criminal Procedure Act and were arraigned in Court to have their fate determined by the Court of competent jurisdiction.

The Respondent further contends that the right to bail is not absolute and that the Applicants were charged with crimes that fall within the exception of crimes for which the right to bail is limited as provided by the Criminal Procedure Act of Tanzania.

The Respondent prays that the prayer sought for declaration of Section 148(5) of the Criminal Procedure Act and Section 36(2) of the Economic and Organized Crime Control Act CAP. 200 fall outside the jurisdiction of this Honorable Court and that the entire Reference be dismissed.

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