

Habiyalimana and Miburo v Tanzania (leave to amend) (2019) 3 AfCLR 1

Application 015/2016, *Habiyalimana Augustino and Miburo Abdulkarim v United Republic of Tanzania*

Order, 31 January 2019. Done in English and French, the English text being authoritative.

Judges: ORÉ, KIOKO, BEN ACHOUR, MATUSSE, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, TCHIKAYA and ANUKAM

Recused under Article 22: ABOUD

Request by the Applicant to amend the Application and file further evidence granted by the Court.

Procedure (leave to amend; leave to file submissions)

I. The Parties

1. The Applicants, Habiyalimnana Augustino (hereinafter referred to as “the first Applicant”) and Miburo Abdulkarim, (hereinafter referred to as “the second Applicant”) are nationals of Burundi. They were convicted of murder contrary to Section 196 of the Penal Code of the United Republic of Tanzania and on 31 May 2007, were sentenced to death by hanging by the High Court of Tanzania at Bukoba. Their conviction and sentence were upheld by the Court of Appeal of Tanzania sitting at Mwanza on 2 March 2012.
2. The Respondent State, the United Republic of Tanzania, became a party to the African Charter on Human and Peoples’ Rights (the Charter) on 21 October 1986 and to 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) on 10 February 2006. On 29 March 2010, the Respondent State deposited its declaration as prescribed under Article 34(6) of the Protocol.

II. Prayers of the Parties

3. The Applicants have both requested for the leave of Court for their applications to be considered separately and have also made specific prayers to the Court as follows:

A. First Applicant's Prayers

4. The first Applicant prays the Court for:
- i. Permission to amend or supplement Application No 015/2016;
 - ii. Permission to file additional evidence in support of the Application pursuant to Rule 50 of the Rules of the Court;
 - iii. Defer drafting of the judgment in this matter until Mr. Augustino has had the opportunity to make the contemplated further submissions and provide additional evidence."

B. Second Applicant's Prayers

5. The second Applicant prays the Court for:
- i. Permission from the Court to file further evidence in his defence, pursuant to Rule 50 of the Rules of Court;
 - ii. Permission to amend and supplement the Joint Application No. 015 of 2016 and Petitioners' Reply so as to include, inter alia, a request for reparations pursuant to Rule 34 of the Rules of the Court;
 - iii. That the Court defer drafting judgment in this matter until the Applicant has had the opportunity to make the contemplated further submissions; and
 - iv. That these matters be addressed at an oral proceeding, pursuant to Rules 27 and 71 of the Rules of Court."

C. Respondent State's Response

6. In its observations to the first Applicant's request, the Respondent State avers as follows:
- i. That the Applicant's Application for leave to amend Application No. 015 of 2016 is a total an after though (sic). We are also of the observation that, the said application intends to empty prejudice the Respondent's Reply and nothing more (sic).
 - ii. However, on the prayer of filing additional evidence pursuant to Rule 50 of the Rules of the Court (sic). We do not object provided that, the Respondent will also be granted time to respond on the new evidence to be filed (sic).
 - iii. We also do not object the prayer which request the Court to defer drafting of the judgment in this matter until Mr. Augustino has had the opportunity to file additional evidence and the Respondent has filed her comments on the new evidence filed (sic)."

III. The Court hereby orders:

i. On the request to separate the Applicants:

That the Application shall not be separated and it will be considered as currently registered and as filed jointly by the Applicants.

ii. On the request for leave to amend the Application and submit new evidence:

1. Reopens the proceedings in Application 015/2015 *Habiyalimana Augustino & Miburo Abdulkarim v United Republic of Tanzania*; and
2. Grants the Applicants leave to amend their application and submit further evidence in support thereof, within thirty (30) days of notification of this Order.

iii. On the request for a public hearing:

The Court shall decide whether or not there should be oral proceedings upon receipt and consideration of the Parties' submissions following the reopening of pleadings.

iv. On reparations:

Allows the Applicants to file their submissions on reparations within thirty (30) days of notification of this Order.