

Nhabi v Tanzania (provisional measures) (2019) 3 AfCLR 10

Application 004/2018, *Ngasa Nhabi v United Republic of Tanzania*

Order, 20 March 2019. Done in English and French, the English text being authoritative.

Judges: ORE, KIKO, BEN ACHOUR, MATUSSE, MUKAMULISA, MENGUE, CHIZUMILA, BENSOUOLA, TCHIKAYA and ANUKAM

Recused under Article 22: ABOUD

The Applicant had been convicted of murder and sentenced to death in 2008. He argued that the trial both before the High Court and the Court of Appeal had been marred by irregularities. At his request, the Court issued provisional measures to the Respondent State to refrain from executing the death penalty until the Application was heard and determined on the merits.

Provisional measures (death penalty, 17)

I. Subject of the Application

1. On 2 March 2018, the Court received an Initial Application filed by Ngasa Nhabi (hereinafter referred to as “the Applicant,” against the United Republic of Tanzania (hereinafter referred to as “the Respondent State,” for alleged violation of his human rights.
2. The Applicant, currently imprisoned in Uyui Central Prison, was convicted of murder and sentenced to death by hanging on 7 March 2008, by the High Court of Tanzania sitting in Tabora. On 24 June 2011, the Court of Appeal in Tabora, Tanzania’s highest court, upheld the sentence. The Applicant lodged an appeal for review before the Court of Appeal in Tabora, which was also dismissed on 5 October 2015.
3. The Applicant alleges, *inter alia*, that the trial before the High Court was marred by irregularities, and that both the High Court and the Court of Appeal erred in their assessment of prosecution and visual identification evidence.
4. In the Application, the Court was requested to order provisional measures.

II. Proceedings before the Court

5. The Application was received at the Court’s Registry on 2 March 2018.
6. In accordance with Rule 35 of the Rules of Court, the Application

was served on the Respondent State on 23 July 2018.

III. Jurisdiction

7. When seized of an application, the Court conducts a preliminary examination of its jurisdiction, pursuant to Articles 3 and 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights (hereinafter referred to as "the Protocol").
8. However, before ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but needs to simply ensure that it has *prima facie* jurisdiction.¹
9. Article 3(1) of the Protocol stipulates that "the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned".
10. On 9 March 2006, the Respondent State became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") and the Protocol on 10 February 2006. It also made the Declaration on 29 March 2010 accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations in accordance with Articles 34(6) and 5(3) of the Protocol read together.
11. The alleged violations which form the subject of the Application concern the rights protected in Articles 3(2), 4 and 7(1)(c) of the Charter. The Court therefore has jurisdiction *rationae materiae* to entertain the Application in the present case.
12. In light of the foregoing, the Court has satisfied itself that it has *prima facie* jurisdiction to examine the Application.

IV. Provisional measures

13. As stated in paragraph 4 above, the Applicant requests the Court to order provisional measures.
14. According to Article 27(2) of the Protocol and Rule 51(1) of the Rules of Court "in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court

1 See Application 002/2013, *African Commission on Human and Peoples' Rights v Libya* (Order of provisional measures, 15 March 2013) and Application 006/2012, *African Commission on Human and Peoples' Rights v Kenya* (Order of provisional measures, 15 March 2013); Application 004/2011, *African Commission on Human and Peoples' Rights v Libya* (Order of provisional measures, 25 March 2011).

shall adopt such provisional measures as it deems necessary” or “any interim measure which it deems necessary to adopt in the interest of the parties or of justice”.

15. It lies with the Court to decide in each situation whether, in light of the particular circumstances of the case, it must exercise the jurisdiction conferred upon it by the afore-cited provisions.
16. It is apparent from the case-file that the Applicant has been sentenced to death.
17. In view of the circumstances of this case which bear the risk that execution of the death sentence may impair the enjoyment of the rights set forth in Articles 3(2), 7(1)(c) of the Charter, the Court decides to exercise its powers under Article 27(2) of the Protocol.
18. Accordingly, the Court finds that the circumstances require an Order of Provisional Measures pursuant to Article 27(2) of the Protocol and Rule 51 of the Rules of Court, so as to preserve the *status quo*, pending the determination of the main Application.
19. To remove any ambiguity, this Order is provisional and in no way prejudices the decision of the Court as to its jurisdiction, admissibility of the Application and the merits of the case.

V. Operative part

20. For these reasons,
The Court,

unanimously orders the Respondent State:

- i. to stay execution of the death sentence, subject to the decision on the main Application, and
- ii. to report to the Court within sixty (60) days of receipt of this Order, on the measures taken to implement it.