

Kulukuni v Tanzania (striking out) (2020) 4 AfCLR 556

Application 007/2018, *Abdallah Ally Kulukuni v United Republic of Tanzania*

Order, 25 September 2020. 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

The Applicant, who had been convicted and sentenced for certain offences, brought this action contending that the domestic proceedings that led to his conviction and the conditions of his incarceration were in violation of his rights. After he filled the application, the Applicant failed to respond to all further communications from the Court's Registry. The Court decided *suo moto*, to strike out the matter for lack of diligent prosecution.

Procedure (struck out for lack of diligent prosecution, 18, 22)

I. The Parties

1. Abdallah Ally Kulukuni (hereinafter referred to as “the Applicant”) is a national of Tanzania, who at the time of filing his Application was serving a Seven (7) year sentence at Maweni Central Prison, Tanga, having been convicted of burglary and stealing by the District Court of Handeni on 7 May 2017.
2. The Application was filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”). The Respondent State became a Party to the African Charter on Human and Peoples’ Rights (hereinafter, “the Charter”) on 21 October 1986, and to the Protocol on 10 February 2006. Furthermore, on 29 March 2010, the Respondent State, deposited the Declaration prescribed under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court decided that the withdrawal of the Declaration would not affect matters pending before it and that the withdrawal would take effect on 22 November 2020.¹

¹ *Andrew Ambrose Cheusi v United Republic of Tanzania*, ACTHPR, Application 004/2015, Judgment of 26 June 2020 (merits), §§ 35-39.

II. Subject of the Application

A. Facts of the matter

3. The Applicant alleges that on 22 April 2014, after a “shoddy and shambolic investigation”, he was arraigned before the District Court of Handeni on a charge of burglary and stealing contrary to Sections 294(1) and 250 of the Respondent State’s Penal Code.
4. The Applicant claims that during his trial, he tried his best to prove his innocence but in vain and, on 7 May 2017, he was convicted and sentenced to seven (7) years’ imprisonment.
5. Aggrieved by the decision of the District Court, the Applicant avers that he filed an appeal at the High Court, which dismissed it for lack of merit on 25 April 2016. He subsequently appealed to the Court of Appeal on 27 April 2016.
6. The Applicant submits that his appeal at the Court of Appeal was heard on 10 July 2017 and the Court quashed his conviction and set aside the sentence imposed on him on 12 July 2017.
7. The Applicant contends that at the trial and appeals, he was not assisted by counsel and it is for this reason that he was unlawfully convicted and sentenced by the District Court and that his appeal at the High Court was wrongly dismissed.
8. The Applicant states that during his imprisonment, he was forced into hard labour while he was given only one meal per day, and this resulted in his health deteriorating. He also contends that his conviction and sentence exposed him to the public as a dishonest criminal person, leading to his stigmatisation in the society. In this regard, he states that, before his conviction, he was trusted by business people and was able to earn his livelihood by doing business but that his conviction tainted his reputation in the business community.
9. Furthermore, the Applicant avers that for the same reason, his wife has separated with him and at the age of 28 “being a toothless young guy” with a criminal record, he has found it difficult to get another woman to marry him.

B. Alleged violations

10. The Applicant alleges that by unlawfully convicting and sentencing him, the Respondent State has violated Articles 3 and 5 of the Charter and his rights and freedoms set out in Articles 12-29 of the Constitution of the Respondent State. The Applicant further avers that, by failing to provide him with legal aid during his trial, the

Respondent State violated his right to legal assistance contrary to Article 13 of the same Constitution.

III. Summary of the Procedure before the Court

11. The Application was filed on 6 February 2018.
12. On 8 March 2018, the Registry acknowledged receipt of the Application, informed him of its registration and sought clarification on whether he was still in prison. He was also requested to substantiate his allegation that the domestic proceedings in the Respondent State had been prolonged when he attempted to seek redress for his grievances.
13. The Registry sent the Applicant four reminders to provide the clarifications sought, that is, on 5 March 2019, 6 August 2019, 4 February 2020 and 8 May 2020. With each reminder, the Applicant was requested to provide the response sought within thirty (30) days of receipt. To date, the Applicant has failed to file the clarifications sought.
14. On 8 May 2020, the Registry sent a letter to the Applicant notifying him of the Respondent State's withdrawal of its Declaration under Article 34 (6) of the Protocol.
15. By the same letter, the Registry also notified the Applicant the decision of the Court of 9 April 2020 that the withdrawal will take effect only after lapse of twelve (12) months from the date of deposit, that is, 21 November 2019 and it does not have effect on all pending applications at the time of the withdrawal, including his Application.

IV. On the striking out of the Application

16. The Court notes that the pertinent Rule on striking out of Applications is Rule 58 of the Rules, which provides that:
Where an Applicant notifies the Registrar of its intention not to proceed with a case, the Court shall take due note thereof, and shall strike the Application off the Court's cause list. If at the date of receipt by the Registry of the notice of the intention not to proceed with the case, the Respondent State has already taken measures to proceed with the case, its consent shall be required.
17. The Court observes that Rule 58 only addresses instances where an applicant expressly indicates the intention to discontinue the application. This Rule does not cover situations where an applicant neither notifies the Court of an intention to withdraw an Application nor actively pursues his case.

18. However, the Court notes that parties to an application should pursue their case with diligence. The failure to do so leads to the logical conclusion, that a party is no longer interested in pursuing their claim. This holds true even though a party does not expressly indicate its intention not to proceed with its case.
19. In the instant Application, the Applicant filed his Application on 6 February 2018. In his Application, the Applicant mentioned that he was not able to exhaust local remedies alleging that domestic proceedings were prolonged. Although he claimed that his conviction and sentence were quashed by the Court of Appeal, he also alleged that he was still in prison at the time of filing the Application.
20. After a preliminary examination of his Application, on 8 March 2018, the Registry wrote to the Applicant requesting clarification whether he was still in prison or whether he had been released after the Court of Appeal quashed his conviction and sentence on 12 July 2017. By the same letter, the Applicant was also requested to substantiate his claim that domestic proceedings to seek redress for his grievances were prolonged.
21. Despite four (4) reminders and a lapse of more than one year and five months, the Applicant has not responded to the request for clarifications. In this regard, the Court notes from the record that, there are proofs of delivery of the letters to his address. While it is not clear whether the Applicant in fact received the letters, it behoves him to take reasonable steps to make a follow-up on his matter and notify the Court if he has been released from prison and changed his address. Without such notification, the Court is constrained in reaching the Applicant for service of process.
22. The Court finds that under these circumstances it is reasonable to conclude that the Applicant has no intention to pursue his Application and therefore, decides that the Application shall be struck out from its Cause List pursuant to Rule 58 of the Rules.
23. The Court notes that, as the Application was not served on the Respondent State, it could not have taken any measures with regard to this case and, therefore, there was no need for the Court to seek its consent before striking out the Application.
24. The Court further notes that, the striking out of the Application is without prejudice to the Applicant to file a new application.

V. Operative part

25. For these reasons:

The Court,

Unanimously,

- i. Orders that Application 007/2018 *Abdallah Ally Kulukuni v United Republic of Tanzania* be and is hereby struck out from the Cause List of the Court.