

Lazaro v Tanzania (reopening of pleadings) (2020) 4 AfCLR 791

Application 003/2016, *John Lazaro v United Republic of Tanzania*

Order (reopening of pleadings), 20 November 2020. Done in English and French, the English text being authoritative.

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

The Applicant, who had been convicted and sentenced to death for murder brought this action alleging that the proceedings before the national courts violated his rights. The Applicant was self-represented and was personally responsible for filing processes in the case. Counsel, who was eventually authorised to represent the Applicant, brought this application for an order to reopen pleadings. The Court granted this application for reopening of pleadings by counsel newly representing the Applicant.

Procedure (reopening of pleadings, 17, 18)

I. The Parties

2. Mr John Lazaro, (hereinafter referred to as “the Applicant”) is a national of Tanzania who was convicted of murder and sentenced to death, on 2 July 2004, by the High Court of Tanzania sitting at Bukoba. The sentence was subsequently upheld by the Court of Appeal sitting at Mwanza, on 6 August 2010. The Applicant alleges violations of his rights during the course of these proceedings.¹
3. The Application is 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 African Union Commission, an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending cases and new

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

cases filed before the withdrawal comes into effect on 26 March 2021, that is, one year after its filing.

II. Subject of the Application

A. Facts of the matter

4. The Applicant alleges that on 6 August 2010, the Court of Appeal at Mwanza, upheld the sentence of death by hanging, which was rendered by the High Court of Tanzania sitting at Bukoba on 2 July 2004, after he was found guilty of murder.

B. Alleged violations

5. The Applicant alleges that the Respondent State has violated the:
 - i. Right to equal protection of the law under Article 3 of the Charter
 - ii. Right to life under Article 4 of the Charter
 - iii. Right to dignity under Article 5 of the Charter
 - iv. Right to liberty under Article 6 of the Charter
 - v. Right to have his cause heard under Article 7 of the Charter

C. Applicant's Prayers

6. The Applicant prays the Court to:
 - i. Declare the Application admissible.
 - ii. Order that his conviction and sentence be quashed.
 - iii. Order that he be released from custody.
 - iv. Grant the applicant reparations in terms of Article 27(1) of the Court Protocol.
 - v. Grant any other relief or orders that may be deemed fit in the circumstances.

III. Summary of the Procedure before the Court

7. The Application was filed on 4 January 2016 by the Applicant, who was self-represented at the time and served on the Respondent State on 25 January 2016.
8. The Respondent State filed the Response to the Application on 11 July 2016 and the Applicant filed his Reply on 25 July 2016.
9. Pleadings were then closed on 8 March 2018.
10. Following the Court's decision to combine consideration of the merits and reparations, on 28 August 2018, the Applicant was

requested to file submissions on reparations. The Applicant filed submissions on reparations on 11 October 2020, and these were served on the Respondent State on 17 October 2018, but it did not file any response.

11. On 17 September 2018, the Human Rights Clinic, Cornell University, Law School, informed the Court that it had authorisation to represent the Applicant through Advocate Jebra Kambole. On 5 October 2018, the Registry informed the Respondent State of the Applicant's representation.
12. On 5 December 2018, Counsel for the Applicant sought leave to amend the Application and file further evidence which was served on the Respondent State on 10 December 2018 with a request to file its observations within thirty (30) days of receipt. By an Order dated 13 February 2020, Counsel for the Applicant was informed that the request was granted and requiring the Applicant to file the amended Application and further evidence within fifteen (15) days of receipt.
13. On 26 February 2019, the Applicant's Counsel requested for an extension of sixty (60) days to amend the Application and file additional evidence on the basis that he was unable to locate the Applicant who was transferred severally to different prisons. He also informed the Court that he had learnt that the Applicant suffered from mental illness and he needed to organise a medical examination. The Request was served on the Respondent State on 8 March 2019 with a request to share its observations within fifteen (15) days of receipt. By a notice dated 21 March 2019, Counsel for the Applicant was informed that this request was granted and requiring the Applicant to file the amended Application and further evidence within sixty (60) days of receipt.
14. On 24 May 2019, the Applicant's Counsel requested for another extension of thirty (30) days to amend the Application and file the additional submissions on the same grounds as before. He also reported that he was unable to obtain from the Respondent State, various documents pertaining to the national proceedings and documents from this Court and that his office is located in Dar-es- Salaam while the Applicant is reportedly incarcerated at Butimba Prison which is a distance away. This additional request was granted and the Counsel for the Applicant was notified on 18 June 2019, and requiring the Applicant to file the amended Application and further evidence within thirty (30) days of receipt. Counsel was also notified that the submissions on reparations from the Applicant were received from Bukoba and not Butimba Prison.

15. On 23 July 2019, Counsel filed the additional submissions indicating that, he was filing them without the knowledge of the Applicant because he had failed to locate him at Butimba Prison, as he had been transferred to an unknown location since April 2019. The Counsel for the Applicant requested the Court to grant leave to file detailed submissions on reparations at such a time when he would be able to locate and interview the Applicant.
16. The additional submissions were transmitted to the Respondent State on 3 September 2019, with a request for it to file the Reply within fifteen (15) days of receipt thereof. The Respondent State did not file the Reply.
17. On 28 September 2020, Counsel for the Applicant filed a supplement to the additional submissions filed on 23 July 2019. The Registry acknowledged receipt thereof on 8 October 2020 and on the same date served them to the Respondent State for information purposes.

IV. On the re-opening of pleadings

18. The Court notes that when the Applicant filed the Application before this Court, he was unrepresented. The Applicant was then provided legal aid by the Human Rights Clinic, Cornell University, Law School, however his Counsel could not locate him to confer with him, but nonetheless, the Counsel filed additional submissions on 23 July 2019 as supplemented in the submissions filed on 28 September 2020. The Applicant is yet to file submissions on reparations.
19. In accordance with Rule 46(3) of the Rules, the Court notes that, in the interest of justice there is a need to re-open the pleadings, to allow the Applicant who is now represented by Counsel to amend his pleadings and file submissions on reparations and to allow the Respondent State to respond thereto.

V. Operative part

20. For these reasons

The Court,
Unanimously,
Orders:

- i. That, in the interest of justice, pleadings in Application 003/2016 *John Lazaro v United Republic of Tanzania* be, and are hereby re-opened.

- ii. The Applicant's amended pleadings and additional evidence be deemed as duly filed and be served on the Respondent State.
- iii. The Applicant to file detailed submissions on reparations.