

Selemani v Tanzania (amendment of pleadings) (2020) 4 AfCLR 802

Application 042/2019, *Masudi Said Selemani v United Republic of Tanzania*

Order (Amendment 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 and ANUKAM

Recused under Article 22: ABOUD

The Applicant, who had been convicted and sentenced to death for murder, brought this action alleging a violation of his right to equal protection of law, dignity and defence. The application for leave to amend pleadings followed the grant of legal aid to the Applicant. The Court granted the leave requested.

Procedure (conditions for amendment of pleadings, 11-12)

I. The Parties

1. Mr. Masudi Said Selemani (hereinafter referred to as “the Applicant”), is a national of Tanzania (hereinafter referred to as “Respondent State”) who is incarcerated at Lilungu prison following his conviction and sentence to death for murder by the High Court at Mtwara.
2. The Respondent State became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment an African Court on Human and Peoples’ Rights on 10 February 2006. It deposited the Declaration prescribed under Article 34(6) of the Protocol on 29 March 2010. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal will have no bearing on pending cases and new cases filed before the withdrawal comes into effect, one year after its filing, that is, on 22 November 2020.¹

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

II. Subject matter of the Request

3. The Application, filed on 19 August 2019, is based on the Respondent State's alleged violations of the Applicant's:
 - i. Right to equal protection of the law protected under Article 3(2) of the Charter;
 - ii. Right to respect of dignity protected under Article 5 of the Charter; and
 - iii. Right to defence protected under Article 7(1)(c) of the Charter.
4. Following the grant of legal aid by the Court to the Applicant, his Counsel, on 5 October, sought leave to amend the pleadings pursuant to Rule 47 of the Rules so as to provide facts and evidence in support of his claims.

III. Summary of the Procedure before the Court

5. The Application was filed on 19 August 2019.
6. The Application was served on the Respondent State on 21 October 2019 and it was requested to file its Response within sixty (60) days of receipt but has not done so even after two reminders sent on 7 May 2020 and 5 August 2020.
7. On 5 October 2020, the Applicant filed a request to amend the Application and this request was transmitted to the Respondent State on 7 October 2020, for its observations, if any, within fifteen (15) days of receipt.
8. On 30 October 2020, the Respondent State filed its observations on the Applicant's request for leave to amend pleadings and these were accepted in the interests of justice. On 2 November 2020, the Respondent State's Response was transmitted to the Applicant and he filed his Reply on 9 November 2020.

IV. On the request for leave to amend pleadings

9. The request for leave to amend the pleadings is on the basis that, as the Applicant is now represented by Counsel, he seeks to substantiate his pleadings by corroborating it with "facts and evidence".
10. The Respondent State avers that the request for leave to amend the pleadings "is an after-thought and has no basis."

- 11.** The Court observes that Rule 47 of the Rules provides as follows:
 1. A party may, subject to the approval of the Court, amend its pleadings before the close of pleadings.
 2. A request for amendment of pleadings shall be made by a written notice explaining the specific part of the pleadings to be amended. The request shall also state the reasons thereof.
 3. If the request is made after the close of pleadings, the Court may grant leave on exceptional basis.
- 12.** The Court notes that the Applicant's request has been filed before the close of pleadings and it also specifies the part of the pleadings sought to be amended. The Court concludes, therefore, that the Applicant's request complies with Rules 47(1) and 47(2) of the Rules.
- 13.** In the circumstances, the Court grants the Applicant's request for leave to amend the pleadings.

V. Operative part

14. For these reasons:

The Court,

Unanimously,

- i. *Grants* the request by the Applicant for leave to amend the pleadings.
- ii. The Applicant's amended pleadings be deemed as duly filed and be served on the Respondent State.