

**Ally v Tanzania (striking out) (2021) 5 AfCLR 324**

Application 019/2017, *Ahmed Ally v United Republic of Tanzania*

Order, 3 August 2021. Done in English and French, the English text being authoritative.

Judges: TCHIKAYA, KIOKO, BEN ACHOUR, MENGUE, MUKAMULISA, CHIZUMILA, BENSAOULA, ANUKAM, NTSEBEZA and SACKO

Recused under Article 22: ABOUD

The Applicant who was in custody awaiting execution of a death sentence was found to have been released on a presidential pardon before pleadings were exchanged. The Court ordered the matter to be struck out since all attempts to communicate with the Applicant had failed.

**Procedure** (Applicant's failure to pursue his case, 14-17)

## I. The Parties

1. Mr. Ahmed Ally (hereinafter referred to as "the Applicant") is a national of Tanzania, who at the filing of this Application was on death row at Uyui Prison awaiting the execution of a death sentence meted upon him after a conviction of murder.
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 of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") 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 has no bearing on pending cases, and new cases filed before the withdrawal came into effect, one year after its filing, that is, on 22 November 2020.

## II. Subject of the Application

### A. Facts of the matter

3. The Applicant alleges that he was convicted of murder and sentenced to death in the High Court of Tanzania at Dar es

Salaam.

4. According to the Applicant, he appealed this decision to the Court of Appeal, which delivered judgment on 19 April 1994 dismissing his appeal in its entirety.

## **B. Alleged violations**

5. The Applicant alleges violation of Articles 2 and 3(2) of the Charter.

## **III. Summary of the Procedure before the Court**

6. The Application was filed on 13 June 2017 and served on the Respondent State on 15 April 2018. The Respondent State was given sixty (60) days to file its Response.
7. On 19 April 2018, the Court *suo motu* granted the Applicant legal aid under its legal aid scheme. This is because the Applicant was on death row, his Application was incoherent and lacked clarity.
8. On 24 August 2018, 15 February 2019 and 25 June 2019, the Respondent State was reminded to file its Response, but it failed to do so. On 17 September 2018, the Parties were requested to file pleadings on reparations following the decision of the Court during its 49th Ordinary Session (16 April-11 May 2018) to combine judgments on merits with reparations.
9. On 1 February 2019, William Ernest, the legal representative of the Applicant, transmitted a letter to the Court indicating that on 22 January 2019, after a visit to Uyui Prison, where the Applicant was being held, he found out that the Applicant had been released through a presidential pardon.
10. On 17 March 2020, the Legal representative of the Applicant transmitted a letter indicating that following the information about the release of the Applicant, they have tried to contact him but have failed and as such he submits that the Court should decide on the way forward.
11. The Court attempted to contact the Applicant through the prisons' authorities on 13 May 2020, 12 October 2020 and 28 May 2021 without any success.
12. Written pleadings were closed with effect from 10 July 2021 and the Parties were notified thereof.

## **IV. On the striking out of the Application**

13. The Court notes the pertinence of Rule 65(1) of the Rules , which

provides that:

1. The Court may at any stage of the proceedings decide to strike out an Application from its cause list where:
  - a. An Applicant notifies the Court of his/her intention not to proceed with the case;
  - b. An Applicant fails to pursue his case within the time limit provided by the Court.
14. The Court notes that the Applicant was pardoned by the President of the Respondent State and therefore released from prison. Furthermore, the legal representatives of the Applicant submitted that they had tried to contact the Applicant so as to pursue the case but to no avail. The Court also tried to contact the Applicant through the prisons' authorities but received no response to its letters.
15. The Court requires that parties to an application should pursue their case with diligence and the failure to do so leads to the conclusion that a party is no longer interested in pursuing their claim.
16. 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 65(1)(b) of the Rules.
17. The decision to strike out the Application does not prevent the Applicant, by showing good cause, from applying for restoration of his matter to the Court's Cause List pursuant to the Rule 65(2) of the Rules.

## **V. Operative part**

18. For these reasons:

The Court,

*Unanimously,*

- i. *Orders* that this Application be struck out from the Cause List of the Court.