

Hamad & Ors v Tanzania (order) (2021) 5 AfCLR 170

Application 046/2020, *Seif Sharif Hamad and 6 Others v United Republic of Tanzania*

Order (striking out the name of the first applicant and change of title of the Application), 4 May 2021. 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 Applicants who are all nationals of the Respondent State, brought an Application before the Court alleging that the Respondent State, acting by some of its agencies had violated their human rights during the national elections. The Applicants brought this Application to strike out the name of the first Applicant who had died during the pendency of the Application. The Court granted the request to strike out the name of the first Applicant and change the title of the Application.

Procedure (inherent power of court to adopt procedures, 11; striking out of name, 13; change of title of Application, 14)

I. The Parties

1. Mr. Seif Sharif Hamad (First Applicant), was a Presidential candidate in Zanzibar for the Alliance for Change and Transparency Wazalendo party (ACT Wazalendo party) during the 2020 general elections. Mr. Ado Shaibu (Second Applicant) is the Secretary General of the ACT Wazalendo party. Mr. Ezekiah Dibogo Wenje (Third Applicant) was a contestant for a Parliamentary seat of Rorya Constituency, Tanzania. Mr. Omar Mussa Makame (Fourth Applicant) was a contestant for the House of Representative in *Kwahani* Constituency, Tanzania. Ms. Dorah Seronga Wangwe (Fifth Applicant) and Mr. Enock Weges Suguta (Sixth Applicant) are registered voters in Tanzania Mainland while Mr. Kassim Ali Haji (Seventh Applicant) is a registered voter in Zanzibar. All the Applicants are nationals of the United Republic of Tanzania.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and the Protocol on 10 February 2006. It deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases 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 held that this withdrawal did not have any effect on pending cases as well as new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period one (1) year after its deposit.¹

II. Subject of the Application

A. Facts of the matter

3. It emerges from the Application that on 21 July 2020, the National Elections Commission (NEC) and the Zanzibar Electoral Commission (ZEC), which organise and supervise the conduct of elections in Tanzania mainland and Zanzibar, respectively announced that local, parliamentary and presidential elections would be held on 28 October 2020.
4. The Applicants allege that preceding, during and immediately after the elections, the Respondent State through its agents namely NEC, ZEC, the Tanzania Police Force, Tanzania Intelligence and Security Service, Tanzania Peoples Defence Force, Tanzania Broadcasting Corporation, Ministry of Information, Culture, Arts and Sports, Ministry for Regional Administration and Local Government, and Special Forces engaged in multiple acts that violated the rights of the Applicants to participate in the elections as citizens of the Respondent.
5. The Applicants thus submit, that the Respondent State by its actions violated Articles 2(1)(a) and (b), and 9(1)(a) and (b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter referred to as "Maputo Protocol"). They also allege that, by ousting the jurisdiction of courts the Respondent State violated Articles 1, 2, 3, 7(1) and 13 of the Charter; Articles 2(3)(a)-(c), 3, 25(a)-(c) of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR").

1 *Andrew Ambrose Cheusi v United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), § 38.

B. Alleged violations

- 6.** The Applicants allege:
 - i. Violation of Articles 1, 2, 3(1) and (2), 13(1) and (2) of the Charter;
 - ii. Violation of Articles 2(1)(a), (b) and 9(1)(a) and (b) of the Maputo Protocol; and
 - iii. Violation of Articles 2(3)(a) and (c), 3 and 25 (a) – (c) of the ICCPR.

III. Summary of the Procedure before the Court

- 7.** The Application was filed on 20 November 2020 and served on the Respondent State on 3 December 2020.
- 8.** The First Applicant died on 17 February 2021. On 24 March 2021, the Court requested the Applicants to indicate how they wanted to proceed with the Application, following the First Applicant's death.
- 9.** On 1 April 2021, the other Applicants informed the Court that following the First Applicant's death, his name should be struck off the Application.
- 10.** On the request to strike out the name of the first Applicant.
- 11.** The Applicants submit that the First Applicant's name should be struck off the Application.

- 12.** The Court notes that Rule 90 of the Rules, provides: “[n]othing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice.”
- 13.** The issue at hand is whether the Court can strike out an Applicant from an Application filed by several Applicants.
- 14.** Since the Second to Seventh Applicants have requested that the First Applicant's name be struck out from the Application following his death, it is in the interest of justice to order the striking out.
- 15.** The Court notes that striking out the First Applicant's name necessitates a change of the title of the Application and that this will not adversely affect either the procedural or substantive rights

of the Respondent State.²

16. Consequently, the Court deems it necessary and for the proper administration of justice to strike out the name of the First Applicant, Seif Sharif Hamad and consequently change the title of the Application from “*Seif Sharif Hamad and 6 others v United Republic of Tanzania*” to “*Ado Shaibu and 5 others v United Republic of Tanzania*”.

IV. Operative part

17. For these reasons:

The Court

Unanimously,

- i. *Takes* due note of the fact that Seif Sharif Hamad who is deceased can no longer be party to this Application;
- ii. *Concludes* that consideration of Application No. 046/2020, by the Court will not be affected by the striking out of the name of Seif Sharif Hamad from the list of Applicants;
- iii. *Directs* that the title of the Application, that is “*Seif Sharif Hamad and 6 others v United Republic of Tanzania*” be replaced by “*Ado Shaibu and 5 others v United Republic of Tanzania*”.

2 *Karata Ernest and others v Tanzania* (procedure) (27 September 2013) 1 AfCLR 356 § 8.