

Muwinda & Ors v Tanzania (reopening of pleadings) (2021)
5 AfCLR 82

Application 030/2017, *Almas Mohamed Muwinda, Sylvester Zanganya, Margret Mhando & 56 Others v United Republic of Tanzania*

Order, 5 March 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 Respondent State brought this Application for reopening of pleadings and extension of time after it failed to respond to the original Application within the timeframe allowed by the Rules. The Court granted the Application and made the orders sought.

Procedure (reopening of pleadings, 15)

I. The Parties

1. Almas Mohamed Muwinda, Sylvester Zanganya, Margret Mhando and 56 others (hereinafter referred to as “the Applicants”), are all Tanzanian nationals. The Applicants bring this Application claiming a violation of their right to be paid their subsistence allowances following their retrenchment by a publicly owned corporation, Urafiki Textile Mills, in 1997.
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.

II. Subject of the Application

3. In their Application, the Applicants allege the violation of their right to be paid emoluments pending their repatriation subsequent to their retrenchment from Urafiki Textile Mills.
4. According to the Applicants, notwithstanding the fact that the Respondent State dissolved Urafiki Textile Mills by a notice published in the Gazette on 21 March 1997, their terminal benefits were not paid immediately. The Applicants further allege that the payment of their terminal benefits was only finalised in March 1998. The Applicants thus claim for the payment of subsistence allowance for the time they were jobless while waiting for the payment of their terminal benefits.

III. Summary of the Procedure before the Court

5. The Application was filed on 25 September 2017 and served on the Respondent State on 23 February 2018.
6. Notwithstanding several reminders from the Registry, the Respondent State has not filed its full List of Representatives, Response or Submissions on Reparations.
7. Pleadings were closed on 28 May 2019 and the Parties were duly notified.
8. On 14 December 2020, the Registry received a request from the Respondent State for extension of time within which to file its Response and Submissions on Reparations.
9. On 7 January 2021, the Registry transmitted the Respondent State's request for extension of time to the Applicants giving them fifteen (15) days within which to file observations, if any.
10. The Applicant did not file any observations within the time prescribed by the Court.

IV. On the request for extension of time and subsequent reopening of pleadings

11. The Respondent State avers that the request for extension of time is due to the fact that "information were being sought from Government stakeholders on the matters, especially in light of the fact that most of the applications need consultations and deliberations with different Governmental agencies."
12. The Applicant did not file observations on the request for extension.
13. The Court observes that Rule 45(2) provides: "Where a party seeks to file out of time, the request shall be made within a

reasonable time, giving reasons for the failure to comply with the time limit.”

14. The Court further observes that Rule 46(3) of the Rules provides that “the Court has the discretion to determine whether or not to reopen pleadings”.
15. The Court recalls that, where the interests of justice so require, it is empowered by the Rules to order that pleadings be reopened or grant an extension of time for a Party to file its pleadings. In the present case, the Court considers that it appropriate, in the interests of justice, to grant the Respondent State’s request for extension of time to file its pleadings. However, given that pleadings were already closed in this matter, the Court also considers it necessary that pleadings be re-opened for purposes of enabling the Respondent to file its pleadings.

V. Operative part

16. For these reasons:

The Court

Unanimously,

Orders that:

- i. In the interests of justice, pleadings in Application No. 030/2017 be and are hereby re-opened.
- ii. The Respondent State should file its full List of Representatives, Response and Submissions on Reparations within thirty (30) days of receipt of this Order.