

**Mwambipile & Anor v Tanzania (provisional measures)  
(2021) 5 AfCLR 620**

*Application 042/2020, Tike Mwambipile and Equality Now v United Republic of Tanzania*

Ruling, 29 November 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 Applicants brought this Application to challenge the Respondent State's policy that excludes pregnant and parenting girls from attending public schools. The Applicants also brought a request for provisional measures along with the main Application. The Court held that the measures sought were similar to the reliefs sought on the merits and held that it would consider the request together with the Application on the merits.

**Provisional measures** (similarity of request with application on the merit, 11-12)

## **I. The Parties**

1. The Applicants are Tike Mwambipile, a national of the United Republic of Tanzania and Equality Now, a Non-Governmental Organisation with Observer Status before the African Commission on Human and Peoples' Rights. They challenge the Respondent State's policies that exclude pregnant and parenting girls from public schools.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State") which became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "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 (hereinafter referred to as "the Declaration"), through which it accepted the jurisdiction of the Court to receive applications filed by 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 had no effect on pending cases or on new cases filed before 22 November 2020, which is the day on which

the withdrawal took effect, being a period of one year after its deposit.<sup>1</sup>

## **II. Subject of the Application**

3. The main Application concerns the ban by the Respondent State of pregnant girls from attending public primary and secondary schools and preventing them from re-accessing the schools even after delivery, which allegedly violates the rights to education and non-discrimination.
4. The Applicants seek as provisional measures an order to stay the implementation of Regulation No. 4 of the Education Regulations (Expulsion and Exclusion of Pupils from Schools) of 2002, to stay the implementation of directives of the Respondent State to ban the resumption of studies in public schools by girls after giving birth and to stop any further expulsions pending the final determination of this case by this Court.

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

5. The main Application was filed on 19 November 2020 together with the request for provisional measures.
6. On 22 December 2020, the main Application together with the request for provisional measures and additional evidentiary documents were served on the Respondent State.
7. On 26 February 2021, the Court informed the Respondent State that it had decided in the interest of justice to grant it an extension of time to file its Response to the request for provisional measures within fifteen (15) days.
8. The Respondent State has not submitted its Response to the request for provisional measures, although the time to do so elapsed on 17 March 2021.

## **IV. Provisional measures requested**

9. In the main Application, the Applicants pray the Court, among others, to order the Respondent State to put an end to the policy of excluding pregnant girls and young mothers from schools, including by repealing Regulation No. 4 of the Education Regulations (Expulsion and Exclusion of Pupils from Schools)

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

of 2002 and other exclusionary governmental directives, and to amend its legislation to protect the right to education.

10. As provisional measures, the Applicants pray the Court to order the Respondent State to stop the exclusion of pregnant girls and young mothers from schools pending the final determination of this Application and to order the stay of implementation of Regulation No. 4 of the Education Regulations (Expulsion and Exclusion of Pupils from Schools) of 2002 and other exclusionary governmental directives.
11. The Court notes from the foregoing that the main Application and the request for provisional measures have the same objective and are inextricably linked such that ruling on the request for provisional measures amounts to ruling on the merits of the Application.
12. The Court, therefore, decides that in the interest of a proper administration of justice it will determine the request for provisional measures together with the merits of the Application and to expedite the determination of the main Application.

## V. Operative part

13. For these reasons:

The Court,

*Unanimously,*

- i. *Decides* that it will consider the request for provisional measures together with the merits of the Application.