

## Mwita v Tanzania (order) (2021) 5 AfCLR 166

Application 012/2019, *Ghati Mwita v United Republic of Tanzania*

Order (filing out of time), 9 April 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 Applicant was convicted and sentenced to death for murder by courts of the Respondent State. In an Application before the Court, she claimed that the entire process leading to her conviction and sentence were in violation of her human rights. The Respondent State, which had not responded to the processes served on it by the Court, brought this Application for extension of time to file its Response. The Court granted the request for extension of time.

**Procedure** (extension of time, 16; discretion to grant extension of time, 17)

### I. The Parties

1. Ghati Mwita (hereinafter referred to as “the Applicant”) is a Tanzanian national. At the time of filing her Application, she was incarcerated at Butimba Central Prison, Mwanza, having been convicted of murder and sentenced to death.
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.<sup>1</sup>

## **II. Subject of the request**

3. By her amended Application, the Applicant alleges that the Respondent State has violated her right to a fair trial contrary to Article 7 of the Charter, her right to life contrary to Article 4 of the Charter and her right to dignity contrary to Article 5 of the Charter. All these violations, the Applicant avers, were occasioned during her arrest, detention, trial, conviction and subsequent imprisonment.
4. The Respondent State has requested, pursuant to Rule 45(2) of the Rules, for an extension of time to file its Response and submissions on reparations.

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

5. The Application was filed on 24 April 2019.
6. On 10 May 2019, the Registry wrote the Applicant requesting her to provide further information and documentation in relation to her claims.
7. On 6 August 2019, the Applicant filed her submissions on reparations together with copies of the judgments from the domestic courts during her trial for murder.
8. On 16 September 2019, the Court, *suo motu*, granted the Applicant free legal assistance.
9. On 29 October 2019, the Applicant, through her Court appointed counsel, filed a request for provisional measures which was served on the Respondent State on 11 November 2019. The Respondent State was requested to file its Response within fifteen (15) days of receipt but filed none.
10. On 9 April 2020, the Court issued an order for provisional measures staying the execution of the death penalty imposed on the Applicant until the determination of the Application on the merits.
11. On 26 November 2020, the Respondent State filed a request for extension of time to file its Response and submissions on reparations. This was served on the Applicant on 7 January 2021

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

for observations, if any, to be made within fifteen (15) days.

12. On 25 January 2021, the Applicant's counsel filed an objection to the request by the Respondent State for extension of time.

#### **IV. On the request to file out of time**

13. The Respondent State avers that its "request for further extension of time to submit its Replies to Applications and Reparations that are pending before [the] Court"... is justified on the basis that its delay was because "various information were being sought from various Government stakeholders on the matters, especially in light of the fact that most of the applications need consultations and deliberations with different Governmental agencies."
14. The Applicant objected to the granting of any extension of time. According to the Applicant, she has already suffered undue delay between her arrest and trial and also her trial before the domestic courts was unreasonably long. The Applicant stated that any further extension of time would violate Articles 1, 4, 5 and 7 of the Charter since the Respondent has already had ample time to "consider and prepare a response."

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15. The Court notes that Rule 45(2) of the Rules provides that "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." In Rule 45(3) of the Rules it is further provided that "the decision to extend time is at the discretion of the Court."
16. The Court recognises that it is accepted practice in international tribunals, for reasons given, to extend the time for filing documents.<sup>2</sup> In the present case, having regard to the Parties' respective positions, as reflected in their submissions, the Court finds that it is appropriate, in the interests of justice, to grant the Respondent State leave to file its Response and submissions on

2 *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* Order of 15 August 2019, I.C.J. Reports 2019, p. 552 and *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*, Order of 22 April 2020, I.C.J. Reports 2020, p. 72.

reparations out of time.

17. The Court recalls that Rule 45(3) of the Rules vests it with discretion in determining any extension of time to be afforded to a Party. In the present Application, the court, in the exercise of its discretion grants the Respondent State an extension of forty-five (45) days within which it must file its List of Representatives and a Response to the Application which addresses both merits and reparations.
18. Specifically, the Court draws the Respondent State's attention to the provisions of Rule 63 of the Rules which vests it with power to render judgments in default in the event a party fails to appear before it or fails to defend its case within the period prescribed by the Court.

## **V. Operative part**

19. For these reasons:

The Court

*Unanimously,*

- i. *Grants* the request by the Respondent State for leave to file relevant pleadings and submissions out of time.
- ii. *Orders* the Respondent State to file its List of Representatives and its Response to the Application, covering both merits and reparations, within forty-five (45) days of notification of this Order.