

John v Tanzania (order) (2022) 6 AfCLR 220

Application 049/2016, *Chrizant John v United Republic of Tanzania*

Order, 13 May 2022. Done in English and French, the English text being authoritative.

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

Recused under Article 22: ABOUD

The Applicant, a citizen of the Respondent State, was incarcerated and awaiting the execution of a death sentence for murder at the time he filed this Application. He alleged that the proceedings before the domestic courts amounted to a violation of some of his Charter protected rights. At the request of the Applicant, the Court had ordered interim measures and granted him legal aid. At the close of pleadings, the parties had not finalised their submissions despite extensions by the Court. Applying its Rules, the Court ordered that pleadings be reopened to enable the parties finalise their submissions.

Procedure (reopening of pleadings in the interests of justice, 10-12)

I. The Parties

1. Chrizant John, hereinafter referred to as “the Applicant”), is a national of United Republic of Tanzania, who, at the time of filing this Application, was incarcerated in Butimba Central Prison in the Mwanza region following his sentencing to death by hanging by the High Court of Tanzania at Bukoba. He alleges a violation of his right to a fair trial in the proceedings before the national courts.
2. The Application is filed against 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 to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, 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 from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission (hereinafter referred to as “AUC”), an instrument withdrawing its Declaration under Article 34(6) of the Protocol. The Court held that this withdrawal had no bearing on pending cases and new cases filed before the withdrawal came

into effect, one (1) year after its deposit, that is, on 22 November 2020.¹

II. Subject of the Application

3. It appears from the record that on 26 June 2015, the Applicant was sentenced to the mandatory death penalty by the High Court sitting in Bukoba for the murder of his mother-in-law, in criminal case No 055 of 2014.
4. Feeling aggrieved, the Applicant appealed to the Bukoba Court of Appeal, which on 24 February 2016 dismissed it in its entirety.

III. Summary of the Procedure before the Court

5. On 1 September 2016, the Registry received the Application initiating the proceedings together with a request for interim measures and a request for legal aid. On 26 September 2016, the Application was served on the Respondent State. On 18 November 2016, the Court issued an order for provisional measures directing the Respondent State to stay the execution of the death sentence against the Applicant, subject to the decision on the main Application.
6. On 12 February 2018, the Court granted legal aid to the Applicant under its legal aid scheme.
7. After several extensions of time at the request of counsel for the Applicant and the Respondent State, the pleadings were closed on 23 July 2019.
8. After the closure of the pleadings both parties submitted written submissions. The Respondent State submitted its response to the Applicant's request for reparations on 28 August 2019, received at the Registry on 5 December 2019. The Applicant submitted its observations on reparations and its rejoinder to the Respondent State's response, reformulated by its counsel, on 9 April 2021.
9. On 27 April 2021, the Registry transmitted the request of the Applicant's counsel to submit further observations to the Respondent State, to which the Respondent State did not respond.

¹ *Ingabire Victoire Umuhoza v Rwanda* (jurisdiction) (3 June 2016) 1 AFCLR 562, § 67 ; *Andrew Ambrose Cheusi v United Republic of Tanzania*, ACTHPR, Application No 004/2015, Judgment of 26 June 2020 (merits and reparations) §§ 37-39.

IV. On the reason for reopening of pleadings

10. The Court notes that Rule 46(3) of the Rules provides that “the Court has the discretion to determine whether or not to reopen pleadings”. The Court further notes that pursuant to Rule 90 of the Rules, “Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure of decisions as may be necessary to meet the ends of justice”.
11. From the proceedings of the present matter as earlier recounted, it merges that both parties have failed to file their pleadings within the time granted. Since the new pleadings involve new arguments and claims on which the Court will be called upon to rule, the interests of justice require that the attention of both parties be drawn to the procedure applicable under Rule 46(3) read in conjunction with Rule 44(2) of the Rules.
12. In view of the foregoing, it is in the interests of justice to reopen the proceedings in order to implement the procedure prescribed by Rule 46(3) of the Rules, namely to allow both parties forty-five (45) days to reply the new submissions made by each of the parties.

V. Operative part

13. For these reasons,
The Court

Unanimously,

Orders that the pleadings in Application n° 049/2016 Chrizant John v United Republic of Tanzania be and hereby reopened.