

Masanja v Tanzania (striking out) (2022) 6 AfCLR 111

Application 002/2018, *Henry Masanja v United Republic of Tanzania*

Order, 24 March 2022. Done in English and French, the English text being authoritative.

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

Recused under Article 22: ABOUD

The Applicant, a citizen of the Respondent State, was serving a prison term for an undisclosed offence at the time he filed this Application. He challenged the domestic proceedings that led to his conviction and sentence, alleging that the Respondent State had violated some of his human rights by the conduct of its Court of Appeal. After the Application was filed, both the Applicant and the Respondent State failed to respond to correspondence from the Court. Accordingly, the Court ordered the Application to be struck out.

Procedure (duty of parties to be diligent, 13-14; Court's discretion, 15)

I. The Parties

1. Mr. Henry Masanja (hereinafter, "the Applicant") is a Tanzanian national, who at the time of filing this Application, was incarcerated at Uyui Central Prison, for reasons that were undisclosed in the Application. He contests the procedure that led to his conviction and sentence.
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 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, through which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs (hereinafter referred to as "the Declaration"). On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and 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.

II. Subject of the Application

A. Facts of the matter

3. It emerges from the record that the Applicant was incarcerated in Uyui Central Prison in Tabora, when he filed the Application before the Court. However, the Applicant had not indicated the reasons for his incarceration, nor did he give any indication of the factual circumstances relating to the alleged human rights violations.

B. Alleged violations

4. The Applicant claims that the Respondent State violated his rights under Article 2 of the Charter because the Court of Appeal of the Respondent State had allegedly procured its judgment by error by not evaluating all the evidence on record.
5. The Applicant further claims that the sentence passed by the Court of Appeal of the Respondent State violated Article 5 of the Charter and Article 14 of the Respondent State's constitution.

III. Applicant's prayers

6. The Applicant prays the Court to restore justice where it was overlooked, quash the sentence imposed upon him and order his immediate release from prison. He further prays the Court to grant any other legal remedy that may be appropriate in these circumstances.

IV. Summary of the Procedure before the Court

7. The Application was filed on 19 February 2018 and was served on the Respondent State on 23 July 2018.
8. The Court requested the Applicant to provide more specification of the claims and supporting evidence of his Application on 2 March 2018, on 18 July 2018, on 26 November 2018, on 28 January 2019 and on 28 August 2019. The Applicant has not responded to the Court's requests.
9. The Court also requested the Applicant to file submissions on reparations on 18 July 2018 and granted an extension to file the same on 26 November 2018, on 28 January 2019 and on 28 August 2019. The Applicant has not filed his submissions on reparations.

10. The Court gave an extension to the Respondent State to submit its Response to the Application on 26 November 2018, on 12 March 2019 and on 28 August 2019.
11. The deadline for the Respondent State to submit its Response lapsed on 14 October 2019.

V. On the striking out of the Application

12. The Court notes that the relevant Rule on striking out of Applications is Rule 65(1) of the Rules, which provides that:
 1. The Court may at any stage of the proceedings decide to strike out an Application from its cause list where:
 - a. An Applicant notifies the Court of his/her intention not to proceed with the case;
 - b. An Applicant fails to pursue his case within the time limit provided by the Court;
 - c. It, for any other reason, concludes that it is no longer justified to continue with the examination of the Application.
13. The Court reiterates that parties to an application should pursue their case with diligence.¹ Where they fail or implicitly or expressly indicate their lack of interest to do so, Rule 65 of the Rules empowers the Court to remove the application from its cause list. The Court may also strike out an application if in the circumstances, it is no longer justified to continue with the determination of the matter.
14. The rationale behind Rule 65 of the Rules, is to encourage parties to demonstrate some level of diligence in pursuing their case or else their application could be struck out from the Court's cause list.
15. Subject to the circumstances of each case, the Court retains the discretion to decide on whether a particular application should be struck out or not.
16. In the instant case, the Applicant filed his Application on 19 February 2018.
17. The Court requested the Applicant to provide more specification of the claims and evidence in support of his Application on 2 March 2018, on 18 July 2018, on 26 November 2018, on 28 January 2019 and on 28 August 2019.
18. The Court also requested the Applicant to file his submissions on reparations on 18 July 2018 and granted an extension to file

¹ *Abdallah Ally Kulukuni v the United Republic of Tanzania*, AfCHPR, Application No 007/2018 Order (strike Out) of 25 September 2020, § 18.

the same on 26 November 2018, on 28 January 2019 and on 28 August 2019.

19. The Court notes that despite the extensions of time granted to the Applicant to file more specification of the claims and evidence in support of his Application and to file his submissions on reparations, the Applicant has failed to do so. Similarly, the Respondent State has failed to file its Response to the Application in spite of the fact that the Court granted it several extensions of time to do so. In this regard, the Court notes from the record that there is proof of delivery of the notices sent to both parties.
20. In view of the circumstances of this case, the Court thus finds that it is no longer justified to continue with the examination of the Application. Consequently, the Court decides to strike it out from its Cause List.
21. The Court notes that, the striking out of the Application is without prejudice to the Applicant's right to file for restoration of his Application in accordance with Rule 65(3) of the Rules.

VI. Operative part

22. For these reasons:

The Court

Unanimously,

Strikes out the instant Application from its Cause List.