

Msuguri v Tanzania (order) (2022) 6 AfCLR 56

Application 052/2016, *Marthine Christian Msuguri v United Republic of Tanzania*

Order (re-opening pleadings), 8 March 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, filed this Application while he was in prison awaiting execution of a death sentence by hanging for murder. The Applicant alleged that the proceedings before the domestic courts, including his trial, conviction and unsuccessful appeal, were in violation of some of his Charter protected rights. After the initial exchange of pleadings, the Applicant filed new pleadings to which the Respondent State did not respond, leading to a closure of pleadings. In this ruling, the Court invoked its Rules of Court to order that pleadings be re-opened to enable the Respondent State file its Response to the Applicant's new pleadings.

Procedure (reopening of pleadings in the interests of justice, 12, 15)

I. Parties

1. Marthine Christian Msuguri (hereinafter referred to as “the Applicant”) is a Tanzanian national who, at the time of filing the Application, was incarcerated at the Butimba Central Prison in Mwanza Region. On 30 July 2010, he was sentenced to death by hanging, following his conviction for the offence of murder. The Applicant alleges the violation of his rights to a fair trial in relation to proceedings before domestic courts.
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 (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 an instrument withdrawing its Declaration.

The Court held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal came into effect 22 November 2020.¹

II. Subject of the Application

3. From the record before this Court, it emerges that, on 30 July 2010, the High Court of Tanzania sentenced the Applicant to death by hanging for the offence of murder, in Criminal Case N° 102 of 2010.
4. Dissatisfied by this decision, the Applicant decided to appeal before the Court of Appeal of Tanzania, which on 11 March 2013 dismissed the appeal entirely.
5. On 12 March 2013, the Applicant filed Application No 7 of 2013 before the Court of Appeal of Tanzania for review of its judgment. He alleges that the Application was neither heard nor listed for hearing up to the time he filed the Application before this Court.

III. Summary of the Procedure before the Court

6. The Application was filed on 9 September 2016 and served on the Respondent State on 16 November 2016.
7. The Parties exchanged pleadings on both the merits of the matter and reparations sought by the Applicant.
8. On 4 October 2018, the Court decided, in the interest of justice, to grant the request by the International Human Rights Clinic at Cornell University School of Law to represent the Applicant and in that regard, recognised Advocate Fulgence T. Massawe as Applicant's Counsel. The Counsel was accordingly availed the case file for submission of pleadings.
9. On 1 June 2020, the Registry transmitted to the Respondent State the new submissions made by the aforementioned Counsel on behalf of the Applicant.
10. At the expiry of the time granted to do so, the Respondent State did not respond to these new pleadings.
11. Pleadings were closed on 2 February 2022 and the Parties were duly informed.

¹ *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

12. 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 or decisions as may be necessary to meet the ends of justice.”
13. The Court recalls that, in accordance with Rule 44(7) of the Rules, “If any party fails to file its pleadings and does not make a request for extension, its attention shall be drawn to Rule 63 of the Rules. In such instance, the defaulting party shall be granted not more than forty-five (45) days to file its pleadings.”
14. From the proceedings of the present matter as earlier recounted, it emerges that the Respondent State did not file any submission after it was granted time to respond to the new pleadings submitted by the appointed Counsel for Applicant. Noting that submissions made by the Applicant in the aforementioned pleadings involve new allegations, arguments and prayers on which the Court will be called to make a determination, the interest of justice demands that attention of the defaulting party, here the Respondent State, be drawn to the procedure applicable under Rule 44(7) read jointly with Rule 63 of the Rules.
15. The foregoing necessitates that pleadings be reopened for purposes of implementing the procedure prescribed under Rule 44(7) of the Rules, that is grant the Respondent State forty-five (45) days to respond to the new pleadings filed by the Applicant, failing which the default procedure will take its course.
16. For these reasons,
The Court
Unanimously,
 - i. Orders that the pleadings in *Application 052/2016 – Marthine Christian Msuguri v United Republic of Tanzania* be, and are hereby reopened.
 - ii. Orders the Respondent State to submit the Response to the Applicant’s new pleadings within forty-five (45) days of receipt thereof.