

Murimi & Ors v Tanzania (order) (2022) 6 AfCLR 387

Application 039, 040, 041/2019, *Chacha Jeremiah Murimi, Methew Jeremiah Daud and Paschal Ligoye Mashiku v United Republic of Tanzania*

Order, 28 July 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 Applicants, all citizens of the Respondent State, were in prison awaiting the execution of a death sentence for murder. They initially filed separate Applications in which they each claimed that their convictions and sentencing violated the right to a fair trial as guaranteed in the African Charter. Based on the similarity of the factual and legal bases of the claims, the Court ordered that the claims be consolidated. The Court further appointed counsel to provide free legal representation for the Applicants. Following the consolidation of the Applications and appointment of counsel to represent them, the Applicants applied for leave to amend pleadings. In this ruling, the Court granted the application and ordered the Applicants to file amended pleadings.

Procedure (conditions for amendment of pleadings, 15)

I. The Parties

1. Chacha Jeremiah Murimi, Methew Jeremiah Daud and Paschal Ligoye Mashiku (hereinafter referred to as “the Applicants”), are nationals of the United Republic of Tanzania (hereinafter referred to as “the Respondent State”) who at the time of filing the Application were incarcerated at Butimba Prison following their conviction and sentence to death for murder by the High Court of Tanzania sitting at Mwanza.
2. The Respondent State 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 to the African Charter on Human and Peoples’ Rights on the Establishment an African Court on Human and Peoples’ Rights on 10 February 2006. It deposited the Declaration prescribed under Article 34(6) of the Protocol on 29 March 2010. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court has held that this withdrawal will have no bearing on pending cases and will only take effect one year after its filing,

namely, 22 November 2020.¹

II. Subject matter of the request

3. The Applications, filed on 22 July 2019, are based on the Respondent State's alleged violations of the Applicants' right to a fair trial.
4. The Applicants have, pursuant to Rule 47 of the Rules, requested to amend the Application.

III. Summary of the Procedure before the Court

5. The Applications were filed separately by the Applicants on 22 July 2019.
6. On 26 September 2019, the Court ordered the joinder of three Applications 039/2019, 040/2019 and 041/2019 as they arise from the same legal and factual basis, the alleged violations and prayers of the Applicants are similar, and the Applicants themselves indicated that they were co-accused in national proceedings.
7. The Applications were served on the Respondent State on 21 October 2019 and it was requested to file its Response within sixty (60) days of receipt.
8. On 12 October 2021, the Applicants were granted legal aid by the Court.
9. On 24 March 2022, the Applicant filed a request to amend the Application.
10. On 29 March 2022, the Registry transmitted the Applicant's request for leave to amend pleadings to the Respondent State for observations.
11. The Respondent State has not filed any observations on the Applicant's request for leave to amend pleadings.

IV. On the request for leave to amend pleadings

12. The request for leave to amend the pleadings is on the basis that, the Applicants seek to substantiate their pleadings by amending paragraphs 1 through 4, prayers of the Applicants and submitting supplementary affidavits through counsel as they were previously unrepresented.

1 *Andrew Ambrose Cheusi v United Republic of Tanzania*, ACtHPR, Application No 004/2015, Judgment of 26 June 2020 (merits and reparations) §§ 37-39.

13. The Respondent State did not file observations on the request.

14. The Court observes that Rule 47 of the Rules provides as follows:
1. A party may, subject to the approval of the Court, amend its pleadings before the close of pleadings.
 2. A request for amendment of pleadings shall be made by a written notice explaining the specific part of the pleadings to be amended. The request shall also state the reasons thereof.
 3. If the request is made after the close of pleadings, the Court may grant leave on exceptional basis.
15. The Court notes that the Applicant's request has been filed before the close of pleadings and it also specifies the part of the pleadings sought to be amended. Furthermore, given that the Applicants were self-represented when they filed their Applications, whereas they are now represented by advocates, the interest of justice requires that they are granted the opportunity to amend their pleadings. The Court therefore, finds that the Applicant's request complies with Rules 47(1) and 47(2) of the Rules.
16. In the circumstances, the Court grants the Applicant's request for leave to file the amended pleadings.

V. Operative part

17. For these reasons,
The Court

Unanimously,

Grants the request by the Applicants for leave to amend the Application and orders that the amended Application be filed within thirty (30) days of notification of this Order.