

Nhabi v Tanzania (striking out) (2022) 6 AfCLR 355

Application 004/2018, *Ngasa Nhabi v United Republic of Tanzania*

Order, 23 June 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 in prison awaiting execution of the death sentence for murder, when he filed this Application. He claimed that the proceedings leading to his conviction and sentence, as well as his unsuccessful appeal, were in violation of his Charter guaranteed rights. After the Court ordered provisional measures, the parties did not file the required pleadings even after reminders and extensions. Accordingly, the Court ordered the case to be struck out.

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

I. The Parties

1. Mr. Ngasa Nhabi (hereinafter, "the Applicant") is a Tanzanian national, who at the time of filing this Application, was incarcerated at Uyui Central Prison. He contests the procedure that led to his conviction and sentence to death for the offence of murder.
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. At the time of filing the Application, the Applicant was incarcerated at Uyui Central Prison in Tabora, following his conviction and sentencing to death for the offence of murder contrary to section 196 of the Respondent State's Penal Code by the High Court of Tanzania at Tabora in Criminal Case No 24 of 2009.
4. The Applicant appealed against the High Court decision at the Court of Appeal of Tanzania at Tabora in Criminal Appeal No 94 of 2008. His appeal was dismissed on 24 June 2011.
5. The Applicant, dissatisfied by the decision of the Court of Appeal, on 15 August 2011, filed an Application for Review of the judgment of the Court of Appeal, through Criminal Application No 2 of 2014. This Application for review was dismissed by the Court of Appeal on 5 October 2015.

B. Alleged violations

6. The Applicant alleges that the Respondent State violated his rights under Article 3(2) of the Charter. He claims that the Court of Appeal of the Respondent State procured its judgment by error for not having adequately considered all the evidence on record.

III. Applicant's Prayers

7. 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

8. The Application was filed on 19 February 2018 and on 2 March 2018 the Applicant was requested to file copies of the record of the proceedings against him before the High Court within thirty (30) days. The Court granted him an extension of time to file the same 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. On 18 July 2018, the Court also requested the Applicant to file submissions on reparations within thirty (30) days and granted an extension of time to file the same on 26 November 2018, on 28 January 2019 and on 28 August 2019. The Applicant is yet to file his submissions on reparations.
10. The Application was served on the Respondent State on 23 July 2018, and it was requested to submit its Response within sixty (60) days. The Court provided the Respondent State an extension of time to file its Response to the Application on 26 November 2018, on 20 March 2019 and on 28 August 2019. The deadline for the Respondent State to submit its Response lapsed on 14 October 2019.
11. On 20 March 2019, the Court delivered an Order of Provisional Measures to stay execution of the death sentence and to report to the Court within sixty (60) days of measures taken to implement it. A copy of the Order was transmitted to both parties on 9 April 2019.

V. On the striking out of the Application

12. The Court notes 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.

¹ *Abdallah Ally Kulukuni v the United Republic of Tanzania*, ACtHPR, Application No 007/2018 Order (Strike Out) of 25 September 2020, § 18; *Magweiga Mahiri v United Republic of Tanzania*, ACtHPR, Application No 029/2017 Order (Strike Out) of 24 March 2022, § 21.

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 Court notes that despite the various extensions of time granted to the Applicant to file copies of the record of the proceedings against him before the High Court and to file his submissions on reparations, the Applicant has failed 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.
17. 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.
18. 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

19. For these reasons,
The Court
Unanimously,
Strikes out this Application from its Cause List.