


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

**LEGAL & HUMAN RIGHTS CENTER AND LIBERATUS
MWANG'OMBE**

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 041/2020

ORDER

(REOPENING OF PLEADINGS)

20 MAY 2025



The Court composed of: Modibo SACKO, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, President of the Court, and a national of Tanzania, did not hear the Application.

In the matter of

LEGAL & HUMAN RIGHTS CENTER AND LIBERATUS MWANG'OMBE

Represented by:

Advocate Jebra Kambole,

Versus

UNITED REPUBLIC OF TANZANIA

Not Represented

After deliberation,

Issues the present Order.

I. THE PARTIES

1. The Application is filed by the Legal and Human Rights Center (LHRC) (hereinafter referred to as "the First Applicant") and Liberatus Mwang'ombe (hereinafter referred to as "the Second Applicant"; both the First and Second Applicants hereinafter referred to jointly as the "Applicants").

2. The First Applicant is an independent, non-partisan and non-profit human rights organization specialized in legal and human rights education and training, civic awareness, research and advocacy, election observation, voter education, policy and law reform, based in Dar es Salaam, Tanzania. It was founded and registered in 1995 under Non-Governmental Organization Act of 2002 as amended and has observer status with the African Commission on Human and Peoples' Rights since 2000.
3. The Second Applicant is a national of Tanzania, a human rights activist who is residing in Dar es Salaam, Tanzania.
4. 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 an instrument withdrawing its Declaration with the Chairperson of the African Union Commission. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 22 November 2020.¹

II. SUBJECT MATTER OF THE APPLICATION

5. The Applicants aver that the Application is a public interest case as it involves issues which have affected and continues to affect thousands of Tanzanian citizens.

¹ *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

6. According to the Applicants, Article 5(2)(c) and 74(12) of the Constitution of the Republic of Tanzania (hereinafter referred to as the “Constitution”), and Section 11(1)(c) of the National Elections Act (Cap. 343 R.E 2015) (hereinafter referred to as “NEA”), through its National Election Commission (hereinafter referred to as “NEC”)² restricts three categories of Tanzanian citizens from registering and voting in the Presidential and National Assembly elections unlike other Tanzanians. The Applicants submit, the restrictions concern citizens sentenced to imprisonment exceeding six months, those sentenced to death and those living in the diaspora.
7. They aver that that in 1977 the Respondent adopted a Constitution which prohibits prisoners from exercising their fundamental human right to vote. The Applicants further aver that the Respondent State enacted the NEA, which also prohibits persons serving certain sentences and citizens living in diaspora from exercising their right to vote or to participate in decision making process. Additionally, the citizens in the diaspora, the Applicants submit, are not provided with facilities and regulations on how to be registered, how to access voters cards and are not sensitized on the procedures of participation in the actual election process. Moreover, they aver that these actions cannot be challenged within the Tanzanian legal system because the Constitution under Article 74(12) prohibits any person from challenging the actions of the NEC.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application was received at the Registry on 19 November 2020 and served on the Respondent State on 7 December 2020. The Respondent State was given 90 days to file its Response and 30 days to submit the list of its representatives.

² Article 74(6) of the Constitution states the mandate of the National Elections Commission as follows:

- Register voters for the union presidential and parliamentary elections.
- Supervise the conduct of the presidential and parliamentary elections.
- Review and demarcate the electoral boundaries.
- Perform any other function as per the law such as organize referendums.

9. On 29 September 2021, the Parties were notified that in accordance with Rule 63 of the Rules, the Court, in the interest of justice, would proceed to render a judgment in default if it did not receive any Response from the Respondent State within 45 days of receipt of the notification.
10. At the expiry of these deadlines, the Respondent State did not file any response to the Application.
11. Pleadings were closed on 9 February 2022 and the Parties were duly notified.
12. On 9 May 2025, The Respondent State filed a Request for re-opening of pleadings and extension of time to file pleadings.
13. On 13 May 2025, the Registry sent an acknowledgment of receipt and transmission of the request to the Applicant for information.

IV. ON THE REOPENING OF PLEADINGS

14. According to the Respondent State, it requires more time to enable it to verify information from different institutions of government as follows:
 - i. Obtaining the accurate number of people in prison who are eligible to be registered and to vote in the general elections from the Tanzania Prison Services;
 - ii. Obtaining the accurate number of people in the diaspora who are eligible to be registered and to vote in the general elections from the Ministry of Foreign Affairs and East African Cooperation;
 - iii. Obtaining information on the procedures and mechanisms that have been put in place by the Ministry of Foreign Affairs and East African Cooperation and the National Elections Commission to enable people in the diaspora to vote;

- iv. Coordinating the process of elections in relation to demarcation of the provinces in Tanzania as far as the Tanzanians who are detainees, prisoners and the diaspora are concerned; and
- v. Obtaining the Hansard and Parliamentary proceedings in respect of the amendments made to the Constitution through Act No. 15 of 1984 and Act No 3. of 2000.

- 15. Rule 46(3) of the Rules of Court provides that “the Court has the discretion to determine whether or not to reopen pleadings”. Further, Rule 90 of the Rules stipulates that “[n]othing 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.”
- 16. The Court notes that the present Application involves alleged violations of political participation and elections. It is therefore in the interest of justice to permit the Respondent State to file its defence.
- 17. Therefore, by virtue of its discretionary power and with the aim of proper administration of justice, the Court grants the request of the Respondent State to reopen the pleadings and to file its Response to the Application within 7 days, if any, from the date of receipt of this Order. No additional time will be granted to the Respondent State, considering that pleadings have been closed since 9 February 2022, that is a period of 1 year, 2 months and 23 days, which was sufficient time for it to have filed its defence.

V. OPERATIVE PART

- 18. For these reasons:

THE COURT,

Unanimously,

- i. *Decides that the pleadings in Application No. 041-2020 – Legal & Human Rights Center and Liberatus Mwang'ombe v. United Republic of Tanzania are reopened; and*
- ii. *Orders the Respondent State to file its Response to the Application, if any, within 7 days from the date of receipt of this Order.*

Signed:

Modibo SACKO, Vice-President,

and Robert ENO, Registrar.

Done at Arusha, this Twentieth Day of the Month of May in the Year Two Thousand and Twenty-Five, in English and French, the English text being authoritative.

