UNION AFRICAINE		UNION AFRICAINE
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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

HOJA MWENDESHA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 032/2016

ORDER

(REOPENING OF PLEADINGS)

9 JANUARY 2023

The Court composed of: Blaise TCHIKAYA, Vice-President, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA**,** Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI - 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, a member of the Court and national of Tanzania, did not hear the Application.[1]

In the Matter of:

HOJA MWENDESHA

Self-Represented

Versus

UNITED REPUBLIC OF TANZANIA

Represented by

i. Dr Boniphace Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General;
iii. Mr Moussa MBURA, Director, Civil Litigation, Principal State Attorney, Office of the Solicitor General;
iv. Mr Hani M CHANGA, Acting Assistant Director, Constitutional, Human Rights and Election Petitions, Principal State Attorney, Office of the Solicitor General;
v. Ms Vivian METHOD, State Attorney, Office of the Solicitor General;
vi. Ms Jacqueline KINYASI, State Attorney, Office of the Solicitor General; and

[1] Rule 8(2) of the Rules of Court of 2 June 2010.

vii. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation.

after deliberation,

renders this Order:

I. THE PARTIES

1. Hoja Mwendesha (hereinafter referred to as "the Applicant") is a Tanzanian national who is incarcerated at Msalato prison in Dodoma. The Applicant is serving a sentence of thirty (30) years' imprisonment for the offence of rape as the first count, and the offence of impregnating a school girl as the second count, which was an alternative to the first count.

2. The Application is filed against the United-Republic of Tanzania (hereinafter "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter "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 application from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission (hereinafter referred to as ''AUS''), an instrument withdrawing its Declaration under Article 34(6) of the Protocol. The Court held that this withdrawal had no bearing on pending cases and new cases filed before the withdrawal came into effect, on (1) year after its deposit, that is, on 22 November 2020.[2]

[2] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (3 June 2016) 1 AfCLR 562, § 67; *Andrew Ambrose Cheusi v. United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations) §§ 37-39.

II. SUBJECT OF THE APPLICATION

3. It emerges from the Application that, the Applicant was convicted for the offence of rape as first count, and, impregnating a school girl as second count. The latter count was an alternative of the first count. The Applicant was therefore sentenced to thirty (30) years imprisonment on 27 May 2010.

4. The Applicant avers that dissatisfied with the decision of the trial Court he lodged the first appeal which was dismissed by the High Court at Mwanza on 28 March 2014. He then filed the second appeal in the Court of Appeal of Tanzania at Mwanza. The said appeal was dismissed in its entirety on 30 November 2015.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. The Application was received by the Registry on 8 June 2016 and was served on the Respondent State on 27 July 2016. On 8 September 2016, the Application was transmitted to the other entities provided for in Rule 42(4) of the Rules.

6. On 17 October 2016, the Respondent State was reminded of the expiry of the time granted to it to designate its representatives and to file its Response to the Application. The Respondent State was granted an additional time of forty-five (45) days to do so.

7. Thereafter, the Respondent State was reminded several times on 31 January 2017, 7 December 2017, and 17 January 2018 to file its Response to the Application but it failed to do so.

8. On 3 May 2018 the Registry received the Respondent State's response to the Application.

9. On 26 November 2018, the Registry informed the Applicant that the Court had decided that henceforth, it will combine reparations when considering the merits of

an application. The Applicant was therefore requested to file its submissions on reparations.

10. On 11 December 2018, the Registry received the Applicant's submissions on reparations, which were transmitted to the Respondent State on 20 December 2018 for response within thirty (30) days. The Respondent State did not file its Response.

11. On 5 February 2019, and 13 March 2019, the Respondent State was reminded to file its Response to the Applicant's submissions on reparations but it failed to do so.

12. Pleadings were closed on 16 December 2020 and the Parties were duly informed.

IV. ON THE REASON FOR REOPENING OF PLEADINGS

13. The Court observes that Rule 46(3) of the Rules of Court provides that "[t] he Court has the discretion to determine whether or not to reopen pleadings".

14. Furthermore, Rule 44(2) provides: "[A]fter the Respondent State has filed its Response, the Applicant may file a Reply thereto within forty-five (45) days''.

15. The Court further notes that under Rule 90 of the Rules

> [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. It emerges from the proceedings in the instant case, as summarised above, that the filing of the Applicant's Reply on the merits is a necessary step required by the Rules. Therefore, it is in the interest of justice that the attention of both Parties be

drawn to the procedure applicable under Rule 44(2) as read together with Rule 46(3) of the Rules.

17. In view of the foregoing, it is in the interest of justice to reopen the pleadings and grant the Applicant forty-five (45) days to file his Reply following the Respondent State's response on the merits of this matter.

V. OPERATIVE PART

18. For these reasons,

The Court,

Unanimously

i. *Orders* the reopening of pleadings in Application No. 032/2016 - *Hoja Mwendesha v. United Republic of Tanzania*.
ii. *Orders* the Applicant to submit his Reply to the Respondent State's Response on the merits within forty-five (45) days of receipt thereof.

Signed:

Blaise TCHIKAYA, Vice-President;

and Robert ENO, Registrar.

Done at Arusha, this 9th Day of January in the year Two Thousand and Twenty-Three, in the English and French languages, the English text being authoritative.