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

MAGWEIGA MAHIRI

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 029/2017

ORDER
(STRIKE OUT)

24 MARCH 2022

The Court composed of: Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO - 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"),[1] Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Magweiga MAHIRI
Self-Represented

Versus

UNITED REPUBLIC OF TANZANIA
Represented by:

i. Mr. Gabriel P. MALATA, Solicitor General, Office of the Solicitor General
ii. Ms. Caroline Kitana CHIPETA, Ag. Director, Legal Unit, Ministry of Foreign Affairs and East African Cooperation
iii. Ms Nkasori SARAKIKYA, Assistant Director for Human Rights, Principal State Attorney, Office of the Solicitor General
iv. Ms Sylvia MATIKU, Principal State Attorney, Office of the Solicitor General
v. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation.

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

after deliberation,

pursuant to Rule 65 (2) of the Rules, renders the following Order:

I. THE PARTIES

1. Mr. Magweiga Mahiri (hereinafter, "the Applicant") is a Tanzanian national, who at the time of filing this Application, was serving a sentence of life imprisonment following his conviction for the offence of murder. The Applicant was initially sentenced to death by hanging, a conviction that was later commuted to life imprisonment by a presidential pardon.

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. It emerges from the records that on 20 May 1985, the Applicant killed Mwita Kenani, who the Applicant claims to have caught red-handed sleeping with his

wife in his matrimonial home. The Applicant alleges that when the deceased tried to escape in the darkness “by breaking through the front door”, he stabbed him to death.

4. After the incident, the Applicant asserts that he was arraigned before the District Court of Tarime in 1988 but despite him pleading guilty for the offence of manslaughter, the case was committed to the High Court of Tanzania on circuit at Musoma where he was charged with the offence of murder.

5. On 28 August 1991, the High Court convicted the Applicant of the offence of murder and sentenced him to death by hanging. Subsequently, the Applicant appealed to the Court of Appeal of Tanzania sitting at Mwanza, challenging both his conviction and sentence.

6. The Court of Appeal upheld the High Court’s verdict and dismissed the appeal on 29 May 1992.

7. The Applicant alleges that his case was heard by the domestic courts without considering the principle of rule of law and against the basic standards of justice. In this regard, the Applicant contends that despite his plea of guilty for manslaughter, the Respondent State relied on four prosecution witnesses to prove the charge of murder and sustain his conviction without following national and international norms applicable to the charge of murder.

B. Alleged violations

8. The Applicant alleges that, by sentencing him to death by hanging while it was supposed to entirely abolish the death penalty, the Respondent State has violated his right to equality and equal protection of the law, the right to life and the right to prohibition against torture and ill-treatment, contrary to Articles 3, 4, 5 of the Charter, respectively.

9. The Applicant also contends that the Respondent State has violated Articles 7, 19 and 26 of the Charter by convicting him of the charge of murder on the

basis of insufficient and unreliable evidence, and by failing to administer justice independently.

III. APPLICANT'S PRAYERS

10. The Applicant prays the Court to:
    i) Declare that the Application is admissible;
    ii) Declare that the decision rendered against him by the domestic courts violated his human rights;
    iii) Issue an order nullifying the said decision of national courts;
    iv) Order his acquittal and release from prison and ensure the full enjoyment of his rights;
    v) Make any other order that the Court finds just and equitable or award reparations in accordance with Article 27 of the Protocol to redress the violations of his rights

11. The Applicant further prays the Court to provide him with legal assistance in order to facilitate his representation and effective participation in the Court's proceedings.

IV. SUMMARY OF PROCEDURE BEFORE THE COURT

12. The Application was filed on 1 August 2017. On 7 August 2017, the Registry acknowledged receipt of the Application and by the same notice, requested the Applicant to provide copies of judgments of national courts pertaining to his Application.

13. On 20 September 2017, the Applicant filed a copy of the judgment of the Court of Appeal. The Registry duly acknowledged receipt and notified the Applicant of the registration of his Application on 4 October 2017.

14. On 5 March 2018, Professor Sandra L. Babcock of the International Human Rights Clinic of Cornell University Law School and Ms Nora Mbagathi, African Case Worker at Reprieve, sent a letter expressing interest to offer *pro bono* representation to the Applicant. On 16 May 2018, the Registry informed them that the Court had accepted their offer to represent the Applicant.

15. On 2 July 2018, the Registry served the Application on the Respondent State with a request to file the names and addresses of its representatives within thirty (30) days and its Response to the Application within sixty (60) days, of receipt of the notice. The Respondent State filed the lists of its representatives on 27 August 2018 and the Registry acknowledged receipt and notified it to the Applicant on 30 August 2018.

16. On 17 July 2018, the Registry sent a notice to the Applicant requesting him to file his submissions on reparations within thirty (30) days of receipt.

17. On 30 August 2018, the Registry reminded the Applicant that the time provided for him to file his submissions on reparations had elapsed on 16 August 2018. It also notified the Applicant of the Court's decision to *suo motu* grant him one last extension of fifteen (15) days from receipt of the notice within which he should file his submissions.

18. On 21 January 2019, the Respondent State, citing scarcity of staff, and that it was still collecting information from various government stakeholders, requested for further extension of time to file the Response within six (6) months. The request was transmitted to the Applicant on 28 January 2018 for his observations within fifteen (15) days of receipt.

19. Both Parties did not respond to the correspondence of the Registry.

V. ON THE STRIKING OUT OF THE APPLICATION

20. The Court notes that the relevant Rule on striking out of Applications is 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.

21. The Court reiterates that parties to an application should pursue their case with diligence.[2] 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.

22. The rationale behind Rule 65 of the Rules, is to encourage parties to demonstrate some level of diligence in pursing their case or else their application could be struck out from the Court's cause list.

23. 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.

24. In the instant case, the Applicant filed his Application on 1 August 2017 praying for, *inter alia*, legal assistance to be provided by the Court.

[2] *Abdallah Ally Kulukuni v the United Republic of Tanzania*, AfCHPR, Application No. 007/2018 Order (Strike Out) of 25 September 2020, § 18.

25. On 17 July 2018, the Applicant was requested to file his submissions on reparations within thirty (30) days of receipt of the notice.

26. On 30 August 2018, the Registry reminded the Applicant that the time provided to file his submissions on reparations had elapsed and notified him of the Court's decision *suo motu* to grant a fifteen (15) days extension of time within which he should file the submissions.

27. On 17 September 2018, Professor Sandra L. Babcock wrote to the Court indicating that:

> …we have not obtained a Power of Attorney in the matter of Magweiga Mahiri, case no. 029/2016, because- as we understand it- Mr Mahiri has been released. We understand the Court intends to proceed with his case. However, we have not been able to locate him and thus, Mr Mahiri does not know of our representation. We would therefore request that the Court delist us as counsel for Mr. Mahiri.

28. On 14 February 2019, the Registry sent a letter to the Respondent State requesting the latter to confirm the release of the Applicant from prison following a Presidential Remission of his punishment. The Respondent State has, to date, not responded to the said letter.

29. The Court notes that, as can be seen from the foregoing, despite the extensions of time granted to the Applicant to file his submissions on reparations, the Applicant has failed to do so. Similarly, the Respondent State has failed to file its Response to the Application in spite of the fact that the Court granted it several extensions of time. In this regard, the Court notes from the record that there are proofs of delivery of the notices sent to both parties.

30. Furthermore, as indicated in the aforementioned letter of Professor Babcock, the Applicant could not be found in the address that he provided in his Application. As a result, it was not possible to obtain a Power of Attorney to provide him legal assistance.

31. The Court underscores that, regardless of his purported release or, possible change of address, it behoves the Applicant to give updates or notify the Court on his prison status or current whereabouts.

32. 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.

33. 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

34. For these reasons:

THE COURT,

Unanimously,

Strikes out the instant Application from its Cause List.

Signed:

Blaise TCHIKAYA, Vice-President;

and Robert ENO, Registrar

Done at Arusha, this Twenty Fourth Day of March in the Year Two Thousand and Twenty-Two in English and French, the English text being authoritative.