

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		

THE MATTER OF

**THOBIAS MANG'ARA MANGO
AND SHUKURANI MASEGENYA MANGO**

V

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 005/2015

(REPARATIONS)

ORDER

(RE-OPENING OF PLEADINGS)

4 SEPTEMBER 2020



The Court composed of: Sylvian ORÉ; President, Ben KIOKO, Vice-President, Rafaâ Ben ACHOUR, Ângelo V. MATUSSE, Marie-Thérèse MUKAMULISA, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM- Judges; and Robert ENO, Registrar.

Pursuant to 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 8(3) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Imani D. ABOUD, member of the Court and a national of United Republic of Tanzania, did not hear the Application.

In the Matter of:

Thobias Mang'ara MANGO and Shukurani Masegenya MANGO

represented by:

Advocate Donald O. DEYA, Pan African Lawyers Union (PALU)

Versus

UNITED REPUBLIC OF TANZANIA

represented by:

- i. Dr. Clement J. MASHAMBA, Solicitor General, Office of the Solicitor General;
- ii. Ms. Sarah MWAIPOPO, Acting Deputy Attorney General, Director, Division of Constitutional Affairs and Human Rights, Attorney General's Chambers;
- iii. Mr. Baraka LUVANDA, Director, Legal Unit, Ministry of Foreign Affairs, East Africa. Regional and International Cooperation;

- iv. Ms. Nkasori SARAKEYA, Deputy Director, Human Rights, and Principal State Attorney, Attorney General's Chambers;
- v. Ms. Alesia MBUYA, Assistant Director, Constitutional Affairs, and Principal State Attorney, Attorney General's Chambers;
- vi. Mr. Mark MULWAMBO, Principal State Attorney, Attorney General's Chambers; and
- vii. Mr. Abubakar A. MRISHA, Senior State Attorney, Attorney General's Chambers

after deliberation,

issues the following Order:

I. THE PARTIES

1. Messrs Thobias Mang'ara Mango and Shukurani Masegenya Mango (hereinafter referred to as "the Applicants") alleged that their rights to a fair trial had been violated by the United Republic of Tanzania (hereinafter referred to as "the Respondent State").
2. The judgment of the Court on merits was delivered on 11 May 2018 and a certified true copy thereof was transmitted by Registry to the Parties on the same day. In the said judgment, this Court found that the Respondent State had violated Article 7(1)(c) of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") and consequently Article 1 of the Charter.

II. SUBJECT MATTER OF THE REQUEST

3. Pursuant to the aforementioned judgment on merits, on 30 July 2018, the Applicants filed submissions on reparations. The pleadings on reparations were exchanged and on 20 May 2020, the Parties were notified that pleadings were closed.

4. On 6 June 2020, pursuant to Rule 50 of the Rules, the Applicants requested leave to file additional evidence in support of their claims on reparations.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. The Parties filed their submissions on reparations within the time stipulated by the Court after several extensions.
6. On 16 April 2020, the Parties were requested to file evidence and observations, as necessary, in support of their claims for reparations.
7. On 7 May 2020, the Applicants were informed that the Respondent State had, on 21 November 2019 deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration deposited in accordance with Article 34(6) of the Protocol and that since the effective date of the withdrawal is 22 November 2020, this has no effect on the consideration of their Application.
8. Pleadings were closed on 20 May 2020 and the Parties were duly notified.
9. On 3 June 2020 the Applicants applied for leave to file additional evidence and on 5 June 2020, the Applicants' request was transmitted to the Respondent State for observations, if any.
10. On 30 June 2020, the Applicants were informed that the Court has denied their request for leave to file additional evidence on the ground that the additional evidence comprised affidavits sworn in July 2019 by the Applicants and the alleged indirect victims and there was no discernible impediment for the Applicants' Counsel to file them as they had ample opportunity to do so before the close of pleadings.
11. During deliberation on the matter in the course of the 58th Ordinary Session, the Court decided, in the interests of justice, to review its previous decision on denial of leave to the Applicants to file additional evidence.

IV. ON THE REQUEST FOR LEAVE TO FILE ADDITIONAL EVIDENCE

12. The Applicant's request for leave to file additional evidence is on the basis that:

- i. The Counsel encountered significant difficulties in acquiring supporting documentation in support of the Applicants' reparation submissions, due to the fact that the Applicants have been incarcerated for almost 16 years, and most of their documentation was misplaced over the years.
- ii. The Applicants were transferred to Segerea and Isanga Prisons without their Counsel's knowledge, and by the time their Counsel obtained this information, prison visits in the country had been suspended as a result of the prevailing COVID-19 pandemic.
- iii. The said pandemic made it impossible for their Counsel to conduct further trips in an attempt to locate other relatives the Applicants might have apart from the few they had communicated with.

13. The Respondent State did not file observations in response to the Applicants' request.

14. The Court observes that Rule 50(2) of the Rules provides: "No party shall file additional evidence after closure of pleadings except by leave of Court".

15. The Court notes that this Rule envisages that additional evidence can be admitted only with leave of court and in exceptional circumstances.

16. The Court notes that although the COVID-19 pandemic occurred after the Applicants and the alleged indirect victims of the Respondent State's actions swore the affidavits in support of their reparation claims in July 2019, the lack of information to Counsel as to the Applicants' whereabouts could have contributed to the delay in the submission of these documents to the Court. The Court therefore notes that this qualifies as an exceptional circumstances warranting

the reopening of pleadings and the admission of the additional evidence filed by the Applicants.

17. The Court considers that in view of the afore-mentioned exceptional circumstances it is appropriate to grant the Applicants' request for leave to file additional evidence.

V. OPERATIVE PART


18. For these reasons:


THE COURT

Unanimously,

- i. Orders that, in the interests of justice, pleadings in *Application No. 005/2015 Thobias Mang'ara Mango and Shukurani Masegenya Mango v. United Republic of Tanzania (Reparations)* be and are hereby re-opened.
- ii. The Applicants' additional evidence be deemed as duly filed and be served on the Respondent State.

Signed:

Sylvain ORÉ, President; 

and Robert ENO, Registrar; 

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

