

AFRICAN UNION
الاتحاد الأفريقي



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

IN THE MATTER OF

DOMINICK DAMIAN

v.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION No. 048/2016

ORDER FOR PROVISIONAL MEASURES

18 NOVEMBER 2016



The Court Composed of; Sylvain ORÉ, President, Ben KIOKO, Vice President, Gérard NIYUNGEKO, El Hadji GUISSÉ, Rafâa BEN ACHOUR, Solomy B. BOSSA, Angelo V. MATUSSE, Ntyam O. MENGUE, Marie-Thérèse MUKAMULISA- Judges; and Robert ENO-Registrar

In the matter of:

DOMINICK DAMIAN

V.

THE UNITED REPUBLIC OF TANZANIA

After having deliberated,

Makes the following Order,

I. Subject of the Application

1. The Court received, on 1 September 2016, an Application from Dominick Damian (hereinafter referred to as “the Applicant”), instituting proceedings against the United Republic of Tanzania (hereinafter referred to as “the Respondent”), for alleged violations of his fundamental rights.
2. The Applicant, who is currently detained at Butimba Central Prison, was sentenced to death by the High Court of Tanzania at Bukoba on 6 December 2012. That death sentence was

confirmed by the Court of Appeal, which is the highest Court in Tanzania, on 17 March 2014.

3. The Applicant states that, not being satisfied with the Court of Appeal decision, he filed a notice of motion before the latter for review of its decision. He states that since then his application for review has not been considered

4. The Applicant alleges, *inter alia*, that:

a) The delay in considering his application for review or the fact that it has not been heard to this day contravenes Articles 13 (1), (2), (3), (4), (5), and (6)(a), 107, and 107A (1)(2) (a) & (b) of the Constitution of Tanzania, and therefore violates his fundamental rights.

b) The trial Court violated his right to a fair trial.

c) The trial Court and the Court of Appeal erred in law and in fact when they failed to find to his advantage when doubts were cast on the prosecution evidence on which they had relied.

d) The trial Court contravened Article 13 of the Constitution of Tanzania for failing to consider evidence in aggravation and/or in mitigation.

II. Procedure before the Court

5. The Application was received at the Registry of the Court on 1 September 2016.

6. Pursuant to Rule 35 of the Rules of Court, on 15 November 2016, the Registry served the Application on the Respondent.

III. Jurisdiction

7. In dealing with an Application, the Court has to ascertain that it has jurisdiction on the merits of the case under Articles 3 and 5 of the Protocol.
8. However, in ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction.¹
9. Article 3(1) of the Protocol provides that “the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned”.
10. The Respondent ratified the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 9 March 1984 and the Protocol on 10 February 2006, and is a Party to both instruments; it equally deposited, on 29 March 2010, a declaration accepting the jurisdiction of the Court to receive cases

¹ See Application 002/2013 African Commission on Human and Peoples’ Rights v Libya (Order for Provisional Measures dated 15 March 2013) and Application 006/2012 African Commission on Human and Peoples’ Rights v Kenya (Order for Provisional Measures dated 15 March 2013); Application 004/2011 African Commission on Human and Peoples’ Rights v Libya (Order for Provisional Measures dated 25 March 2011).

from individuals and Non-Governmental Organizations, within the meaning of Article 34(6) of the Protocol, read together with Article 5(3) of the Protocol.

11. The alleged violations the Applicant is complaining about are guaranteed under Articles 3(2), 4 and 7(1) (a) and (c) of the Charter and the Court therefore has jurisdiction *ratione materiae* over the Application.

12. In light of the foregoing, the Court has satisfied itself that, *prima facie*, it has jurisdiction to deal with the Application.

IV. On the Provisional Measures

13. In his Application, the Applicant did not request the Court to order Provisional Measures.

14. Under Article 27(2) of the Protocol and Rule 51(1) of the Rules, the Court is empowered to order provisional measures *proprio motu* "in cases of extreme gravity and when necessary to avoid irreparable harm to persons" and "which it deems necessary to adopt in the interest of the parties or of justice".

15. It is for the Court to decide in each situation if, in light of the particular circumstances, it should make use of the power provided for by the aforementioned provisions.

16. The Applicant is on death row and it appears from this Application that there exists a situation of extreme gravity, as well as a risk of irreparable harm to him.
17. Given the particular circumstances of the case, where the risk of execution of the death penalty will jeopardize the enjoyment of the rights guaranteed under Articles 3(2) and 7(1)(a) and (c) of the Charter, the Court has decided to invoke its powers under Article 27(2) of the Protocol.
18. The Court finds that the situation raised in the present Application is of extreme gravity and represents a risk of irreparable harm to the rights of the Applicant as protected by Articles 3(2) and 7(1)(a) and (c) of the Charter, if the death sentence were to be carried out.
19. Consequently, the Court holds that the circumstances require an Order for provisional measures, in accordance with Article 27(2) of the Protocol and Rule 51 of its Rules, to preserve the *status quo*, pending the determination of the main Application.
20. For the avoidance of doubt, this Order shall not in any way prejudice any findings the Court shall make regarding its jurisdiction, the admissibility and the merits of the Application.

For these reasons,

21. The Court, unanimously, orders the Respondent to:

a) refrain from executing the death penalty against the Applicant.

b) report to the Court within sixty (60) days from the date of notice of this Order on the measures taken to implement the Order.

Done at Arusha, this 18th day of November in the year 2016, in English and French, the English text being authoritative.

Signed:

Sylvain ORÉ, President



Ben KIOKO, Vice President



Gérard NIYUNGEKO, Judge



El Hadji GUISSÉ, Judge



Rafâa BEN ACHOUR, Judge



Solomy B. BOSSA, Judge



Angelo V. MATUSSE, Judge



Ntyam O. MENGUE, Judge



Marie-Thérèse MUKAMULISA- Judge; and



Robert ENO-Registrar

