

African Court on Human and Peoples' Rights.

**The Matter of Joseph John v. United Republic of
Tanzania.**

Application No. 005/2018

Judgment of 22 September 2022

DISSENTING OPINION



1. I do not agree with the finding of the Court in its judgment referred to above and the grounds for dismissing the Applicant's request for reparation in respect of non-pecuniary damage suffered by the indirect victims. Indeed, the Court dismissed the request for reparation on the ground that the Applicant did not prove his relationship with the alleged victims.
2. It is for this reason that I make this Opinion which restates my consistent position as regards the issue of evidence not filed by the parties, especially the Applicant. It is my position that the Court must always compel the parties to file documents in support of the alleged violation of rights, instead of simply dismissing the request without first trying to use its power to have the parties file the documents.
3. Indeed, Rule 51, of the Rules of Court clearly states that "[T]he Court may, during the course of the proceedings and at any other time the Court deems it appropriate, call upon the parties to file any pertinent document or to provide

any relevant explanation. The Court shall formally take note of any failure to comply”.

4. Moreover, Rule 55(1) clearly states that "The Court may, of its own accord or at the request of a party, obtain any evidence which in its opinion may provide clarification of the facts of a case..."
5. I am of the view that a reading of the two above-mentioned articles leaves no doubt as to their meaning. The Court has the prerogative to request for any document relevant to the resolution of the dispute! Therefore, although the exercise of this prerogative is at the discretion of the judges, the Court must in no way choose to exercise it against the interest of justice! As its fundamental goal is to protect human rights and people's rights, which often brings to the fore poor, illiterate and ignorant applicants, the Court must always make decisions based on grounds that are beyond reproach.
6. The fact that the Applicant is represented by a lawyer cannot be sufficient ground for the Court to discard its power to compel the parties to file relevant documents. This is because the lawyer, whether out of bad faith or good faith, or for any other reasons, may not do so, in which case, the Court, in all circumstances, must lean towards the interests of the Applicant as a victim rather than focus on his lawyer.
7. Moreover, the neutrality of a judge cannot find a basis on such a negative attitude of the Court, because the most important consideration is to render a well-reasoned judgment that not only sets the parties at rest but is also convincing.
8. All that it takes to uphold the judge's neutrality and the adversarial principle is to notify documents received to the other parties!
9. The grounds of the aforementioned judgment would have been more substantial and convincing if, first, the Applicant had been compelled to file the documents and, second, in the event that he failed to comply with the order, if

the court had simply referred to his failure to comply, which would have strengthened the grounds of the judgment considerably.



Judge Bensaoula

