


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

NZIGIYIMANA ZABRON

V.

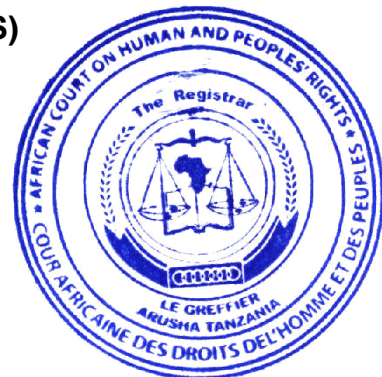
UNITED REPUBLIC OF TANZANIA

APPLICATION No. 051/2016

ORDER

(REOPENING OF PLEADINGS)

26 OCTOBER 2023



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

In the Matter of:

Nzigiyimana ZABRON

Represented by:

Advocate William ERNEST

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Dr Boniface Nalija LUHENDE, Solicitor General, Office of the Solicitor General;
- ii. Ms Sarah Duncan MWAIPOPO, Deputy Solicitor General, Office of the Solicitor General;
- iii. Ms Nkasori SARAKEYA, Assistant Director, Human Rights, Principal State Attorney, Attorney General's Chambers;
- iv. Mr Baraka Luvanda, Ambassador, Head of Legal Unit, Ministry of

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

- Foreign Affairs and International Cooperation;
- v. Ms Aidah KISUMO, Senior State Attorney, Attorney General's Chambers;
 - vi. Ms Blandina KASAGAMA, Legal Officer, Ministry of Foreign Affairs and East African Cooperation; and
 - vii. Mr Elisha Suku, Foreign Service Officer, Ministry of Foreign Affairs and East African Cooperation.

After deliberation,

Issues the present Order:

I. PARTIES

1. Nzigiymana Zabron (hereinafter referred to as "the Applicant") is a national of Burundi who at the time of filing this Application, was awaiting the execution of the death sentence at Butimba Central Prison, Mwanza, following his conviction for murder. The Applicant alleges the violation of his rights in relation to proceedings before domestic courts.
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 the Protocol on 10 February 2006. It deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (hereinafter referred to as "the Declaration"). On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal did not have any effect on pending cases as well as

new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period one (1) year after its deposit.²

II. SUBJECT OF THE APPLICATION

3. It emerges from the record that the Applicant murdered one Mr Fadhili Seleman on 8 July 2004. He was charged in the High Court of Tanzania at Tabora with the offence of murder in Criminal Case No. 20 of 2008 and was convicted and sentenced to death by hanging on 25 June 2012. He subsequently appealed his conviction and sentence to the Court of Appeal of Tanzania in Criminal Appeal No. 182 of 2013. The Court of Appeal dismissed his appeal in its entirety on 25 September 2013.
4. The Applicant filed the present Application on 1 September 2016. In April 2020, his death sentence was commuted to life imprisonment.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. The Applicant filed his Application on 1 September 2016 and this was served on the Respondent State on 16 November 2016. The Respondent State filed its Response on 17 May 2017.
6. On 16 May 2018, the Court granted the Cornell University Law School's request to provide free legal representation to the Applicant.
7. The Cornell University Law School filed amended pleadings which were served on the Respondent for response. Despite several extensions of time, the Respondent State did not respond to the amended pleadings.

² *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

8. On 21 July 2023, the Respondent State was granted one last extension of thirty (30) days to file the said response failing which the Court would proceed and give judgment.
9. On 15 August and 21 August 2023 respectively, the Respondent State filed a request to be availed a copy of the file; and to be granted one further extension of fourteen (14) days to file its response to the amended pleadings.
10. On 22 August 2023, the Registry informed the Respondent State that it was granted the requested extension of fourteen (14) days subsequent to which the Court would proceed and give judgment. At the expiry of the allocated time, the Respondent State did not file its response.
11. On 5 September 2023, pleadings were closed and the Parties were duly notified.
12. On 13 September 2023, the Registry received the Respondent State's response to the amended pleadings.

IV. ON THE REASON FOR REOPENING OF PLEADINGS

13. The Court notes that Rule 46(3) of the Rules provides that "the Court has the discretion to determine whether or not to reopen pleadings". The Court further notes that pursuant to Rule 90 of the Rules, "Nothing 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."
14. Furthermore, the Court recalls that, in accordance with Rule 45(1) of the Rules, "Pleadings filed out of time limits set out in these Rules shall not be considered unless the Court decides otherwise".
15. From the proceedings of the present matter as earlier recounted, it emerges that the Respondent State filed its Response to the amended pleadings out of time. The Court

notes that the filing of the Applicant's Reply to the Respondent State's submissions is a necessary step required by the Rules. Further, this Application raises legal issues involving alleged violation of the right to life, and mandatory imposition of the death penalty. Therefore, it is in the interest of justice that the Applicant be allowed to file further observations on the Respondent State's submissions should he decide to do so.

16. In view of the foregoing, it is in the interest of justice to reopen the pleadings and, in the circumstances of the Application, grant the Applicant fourteen (14) days to file his Reply following the Respondent State's response to the amended pleadings.

V. OPERATIVE PART


17. For these reasons:

THE COURT


Unanimously

- i. *Orders* that the proceedings in *Application 051/2016 – Nzigiyimana Zabron v. United Republic of Tanzania* are hereby reopened.
- ii. *Orders* the Applicant to submit his Reply to the Respondent State's Response to the amended pleadings within fourteen (14) days of receipt thereof.

Signed:

Modibo SACKO, Vice-President; 

Robert ENO, Registrar.



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

