


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

THE MATTER OF

IDDI S/O AMANI

V

UNITED-REPUBLIC OF TANZANIA

APPLICATION NO. 025/2017

ORDER

(REOPENING OF PLEADINGS)

20 NOVEMBER 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, and 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:

Iddi s/o AMANI

Self-represented.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by

- i. Dr. Boniphace Naliya LUHENDE, Solicitor General, Office of the Solicitor General;
and
- ii. Ms. Pauline MDENDEMI, State Attorney, Office of the Solicitor General.

After deliberation,

Issues the present Order:

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

I. PARTIES

1. Iddi s/o Amani (hereinafter referred to as “the Applicant”) is a national of Tanzania, who, at the time of filing the Application, was incarcerated in Uyui Central Prison, Tabora, Tanzania having been convicted for the offence of rape of a minor girl and sentenced to thirty (30) years imprisonment. He alleges violation of his rights during the proceedings before national 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 to the Protocol on 10 February 2006. Furthermore, on 29 March 2010, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), through which it accepted the jurisdiction of the Court to receive applications from Individuals and Non-Governmental Organisations (hereinafter referred to as “NGOs”). 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.²

II. SUBJECT OF THE APPLICATION

3. It emerges from the record, that on 14 September 2010, the Applicant, who avers he was fifteen (15) years old at the material time, was arrested for having had sexual intercourse with a sixteen (16) year-old girl on 12 September 2010. The girl admitted to having spent the night with the Applicant and that since

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

July 2010 they were in a sexual relationship. The girl's father reported the matter to the street chairman, who in turn ordered militia men to arrest the Applicant and bring him to the police station.

4. The Applicant was charged and convicted by the District Court of Kigoma on 13 June 2011 of the offence of rape under Section 130(2)(e) of the Respondent State's Penal Code. The District Court sentenced him to the minimum sentence of thirty (30) years imprisonment on 14 June 2011.
5. The Applicant appealed against his conviction and sentence to the High Court of Tanzania at Tabora, but his appeal was dismissed on 3 September 2012. He then appealed to the Court of Appeal of Tanzania, which on 20 September 2013, also dismissed the appeal.
6. The Applicant alleges that the Respondent State violated his rights to a fair trial, to equality before the law, to equal protection of the law and to non-discrimination.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application was filed on 31 August 2017 and it was served on the Respondent State on 16 July 2018.
8. The Parties filed their pleadings on merits and reparations within the time stipulated by the Court.
9. Pleadings were closed on 30 September 2021 and the Parties were duly notified.

IV. ON THE REASON FOR REOPENING OF PLEADINGS

10. 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.”

11. Furthermore, the Court notes that Rule 55 of the Rules provides as follows:
 - i. 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. The Court may decide to hear a witness, an expert or any other person whose evidence, assertions or statements it deems likely to assist it in carrying out its task.
 - ii. The Court may, for purposes of obtaining information, request any person or institution of its choice to express an opinion or submit a report to it on any specific point.
 - iii. The Court may, at any time during the proceedings, assign one or more Judges to conduct an enquiry, carry out a visit to the scene or take evidence in any other manner, including to take testimony on oath using appropriate means.

12. The Court observes that the Applicant did not provide evidence concerning his exact age, nor did the Respondent State.

13. Considering that the Applicant’s age is an essential element in the allegations raised in this Application, the Court has decided to reopen pleadings, allowing both parties to provide evidence to clarify the key facts in this case.

14. In view of the foregoing, the Court holds that it is in the interest of justice to reopen the pleadings and, in the circumstances of the Application, grant the Applicant and the Respondent State thirty (30) days to file their submissions on the Applicant's age.
15. The Court furthermore notes that the record of the trial court proceedings was not submitted in this Application and orders the parties to submit to this Court a copy of the same within thirty (30) days.

V. OPERATIVE PART

16. For these reasons:

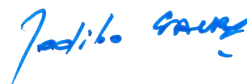
THE COURT

Unanimously


- i. *Orders that the proceedings in Application 025/2017 – Iddi Amani v. United Republic of Tanzania are hereby reopened.*
- ii. *Orders the Applicant and the Respondent State to submit evidence of the Applicant's age within thirty (30) days of receipt thereof.*
- iii. *Orders the Applicant and the Respondent State to submit a copy of the record of the trial court proceedings within thirty (30) days of receipt thereof.*

Signed:

Modibo SACKO, Vice-President;



Robert ENO, Registrar.



Done at Algiers, this 20th Day of November, in the Year Two Thousand and Twenty-Three in English and French, the English text being authoritative.

