

## **DISSENTING OPINION OF JUDGE RAFAË BEN ACHOUR**

### **I. Introduction**

1. I dissent in the Ruling by which the Court decided to reopen pleadings in the Consolidate Applications Nos. 039–040–041/2019, filed on 7 August 2019 by Mr. Chacha Jeremiah Murimi, Mr. Methew Jeremiah Daud, and Mr. Paschal Ligoye Mashiku.
2. The three Applicants, who are Tanzanian nationals, have been incarcerated in Butimba Central Prison (Mwanza) since that date, following their conviction and sentencing to death for murder. Given their status as death row inmates, the proceedings needed to be conducted with the utmost rigour.

### **II. On the late request of the Respondent State**

3. The Ruling was issued in response to a letter from the Respondent State, which was addressed to the Court more than five years after the Applications were filed. In a letter dated 20 November 2025, the Respondent State requested the reopening of the pleadings and sought authorization to submit a Response after the deadline for doing so had passed.
4. The Respondent State asserts that the delay was “neither deliberate nor due to any negligence”, but arose from “the need to gather information from a wide range of stakeholders”, as the case involved the murder of a person with albinism.

5. The Respondent State refers to Rules 45 and 46 of the Rules of Court,<sup>1</sup> claiming that the case needed to be reopened in the interest of justice. Along with its Application, the Respondent State submitted a brief that reiterates, without introducing any new arguments, the same grounds that have been presented to the Court on multiple occasions, namely, lack of material jurisdiction, failure to exhaust local remedies, while disputing the claims regarding the right to a fair trial.

### **III. On the relevance of the delayed Response**

6. Having taken cognisance of this correspondence, the Court chose not to examine the reasons provided by the Respondent State for the delay, nor to take into account its prolonged silence for over five years, despite multiple reminders from the Registrar's Office and several generous extensions of time.
7. It emerges from the Respondent State's submission that the brief does not introduce any new information that could influence the Court's future decision, particularly on two key issues, namely, the mandatory death penalty and its enforcement by hanging. The Court's jurisprudence on these matters is both well-established and abundant.

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<sup>1</sup> Rule 45. Filing out of time

1. Pleadings filed out of the time limits set out in these Rules shall not be considered unless the Court decides otherwise.

2. Where a party seeks to file pleadings out of time, the request shall be made within a reasonable time, giving reasons for the failure to comply with the time limit. Such request shall be communicated to the other party, and the latter shall be given fifteen (15) days within which to react to the request.

3. The decision to extend time is at the discretion of the Court.

Rule 46. Close of pleadings

1. The written pleadings shall be considered to have closed when the Applicant Replies to the Respondent State's Response to the Application or when the Court so decides.

2. Each party reserves the right to apply for leave to present additional submissions after close of pleadings. Such application shall be communicated to the other party, and the latter shall be given fifteen (15) days within which to react. 3. The Court has the discretion to determine whether or not to reopen pleadings. 4. No party may file additional evidence after the close of pleadings except by leave of Court.

#### **IV. On the differential treatment of the parties**

8. Instead of dismissing a request that was clearly belated and insufficiently justified, the Court decided — on 20 November 2025, the same day that same was received,— to forward the request to the applicants, giving them a short 15-day time-limit to submit their observations.
9. It is worth noting that, since 21 August 2019, when the Applications were first filed, the Respondent State was granted three extensions (on 9 July 2020, 28 July 2021, and 27 August 2021), but failed to respond to any of them.
10. On 3 January 2023, the Respondent State received the Applicants' amended observations, with a request to respond within 45-days, but failed to comply.
11. On 22 October 2024, a final reminder was sent to the Respondent State , with a warning that the Court would proceed to issue a Ruling by default if it failed to respond within 30 days, in accordance with Rule 63(1) of the Rules of Court. This reminder, too, went unanswered.
12. Written pleadings were closed on 11 November 2025. It was only after this closure, and for the first time in more than five years, that the Respondent State suddenly requested the reopening of the pleadings.

#### **V. Assessment of the procedural manoeuvre**

13. This conduct can reasonably be interpreted as a delaying tactic.
14. It is indeed regrettable that the Court felt compelled to act on this request, resulting in the adjournment of deliberations in a case where the right to life - a supreme, non-derogable right - is directly at stake.

## VI. Conclusion

15. In my view, the order to reopen pleadings is not supported by the rules of procedure, the principles of proper administration of justice, or the fundamental requirements for effective judicial protection of human rights.
16. For these reasons, I must respectfully disagree with the decision, hence my dissent.

