

TANZANIA / JUDGMENT

hussein v united republic of tanzania application no 0012018 2024 afchpr 21 28 october 2024

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AFRICAN UNION UNION AFRICAINE UNIÃO AFRICANA AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES THE MATTER OF TEMBO HUSSEIN V. UNITED REPUBLIC OF TANZANIA APPLICATION No. 001/2018 ORDER (REOPENING OF PLEADINGS) 28 OCTOBER 2024 The Court composed of: Modibo SACKO, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI and Duncan GASWAGA – 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: Tembo HUSSEIN Self-represented Versus UNITED REPUBLIC OF TANZANIA Represented by: Dr. Ally POSSI, Solicitor General, Office of the Solicitor General After deliberation, Issues this Order: 1 Rule 8(2), Rules of Court, 2 June 2010. 1 I. PARTIES

1. Tembo Hussein (hereinafter referred to as “the Applicant”) is a national of the United Republic of Tanzania. At the time of filing the Application he was serving a death sentence at Uyui Central Prison, Tabora, having been tried, convicted and sentenced to death by hanging for the offence of murder. He alleges violation of his rights during the proceedings before the national courts.
2. The Application is filed against the United Republic of Tanzania (hereinafter, “the Respondent State”), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter, “the Charter”) on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration provided for under Article 34(6) of the Protocol (hereinafter, “the Declaration”), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non- Governmental Organisations with observer status before the African Commission on Human and Peoples' Rights. On 21 November 2019, the Respondent State deposited with the

Chairperson of the African Union Commission an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending cases nor on new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 22 November 2020.^{2 2} Andrew Ambrose Cheusi v. United Republic of Tanzania, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39. 2 II. SUBJECT OF THE APPLICATION A. Facts of the matter

3. It emerges from the record that the Applicant was arrested on 27 September 2006 at Masumbwe village within Kahama District in Shinyanga region and charged with murder for the killing of one Angelina Hungwi by inflicting on her multiple cuts with a machete. He was convicted of murder and sentenced to death by hanging by the High Court sitting at Tabora on 11 October 2013.
4. The Applicant filed an appeal before the Court of Appeal sitting at Tabora which was dismissed on 15 March 2014.
5. An application for review of the Court of Appeal's decision filed by the Applicant, before the Court of Appeal, was dismissed on 7 August 2017. B. Alleged violations
6. The Applicant alleges that proceedings against him before domestic courts breached one of the principles of natural justice, namely the rule against bias. Accordingly, the Applicant alleges that the Respondent State violated his rights, as follows:
 - i. The right to a fair trial, guaranteed under Article 7 of the Charter.
 - ii. The right to equality before the law and to equal protection of the law guaranteed under Article 3(1) and (2) of the Charter.
- 3 III. SUMMARY OF THE PROCEDURE BEFORE THE COURT
7. The Application was filed on 19 February 2018 and it was served on the Respondent State on 23 July 2018.
8. On 2 March 2018 and on 18 July 2018, the Court requested the Applicant to file more detailed submissions on reparations. The Applicant, however, failed to do so.
9. On 21 January 2019, the Respondent State requested the Court for a six (6) months' extension of time to file its Response. On 20 March 2019, the Court granted an extension of time of four (4) months within which the Respondent State was to file its Response to the Application. The Respondent State was also reminded of the provisions of Rule 63 of the Rules of Court on decisions of the Court in default.³
10. On 11 February 2019, the Court issued an order for provisional measures proprio motu directing the Respondent State to stay the execution of the death sentence against the Applicant, subject to the decision on the main Application.
11. On 24 June 2019, the Application was transmitted to all State Parties to the Protocol and to all other entities listed in Rule 42(4) of the Rules.⁴

12. On 28 August 2019, the Court granted a final extension of time of forty-five (45) days to the Respondent State to file its Response to the Application. However, the Respondent State did not file any Response.
13. On 10 January 2024, the Respondent State requested the Court to supply it with a copy of the Application, so that it can file its Response and necessary documents for the Court's determination. 3 Rule 55, Rules of Court, 2 June 2010. 4 Rule 35(3), Rules of Court, 2 June 2010. 4
14. On 12 February 2024, the Court responded to the Respondent State and drew its attention to the different notices detailing the previous service of the Application and the subsequent correspondence between the Court and the Respondent State. Nonetheless, the Court decided in the interests of justice to transmit again a copy of the Application to the Respondent State and requested it to file its Response within sixty (60) days of receipt of the notification. The Respondent State was also advised in the same notification that should it fail to file a Response within the above stipulated period, the Court will proceed, in the interests of justice, to issue judgment in default in accordance with Rule 63 of the Rules of Court. This deadline for filing a response lapsed on 19 April 2024.
15. Pleadings were closed on 29 April 2024 and the Parties were duly notified.
16. On 26 August 2024, the Respondent State filed its Response together a request to re-open pleadings in this Application, so as to allow it to file its Response. The request to re-open pleadings was notified to the Applicant for its observations within fifteen (15) days. The Applicant did not file a response. IV. ON THE REQUEST FOR REOPENING OF PLEADINGS
17. 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." 5
18. 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".
19. From the Respondent State's request to re-open pleadings, it emerges that the Respondent State filed its Response to the Application out of time, because it was gathering information from various stakeholders.
20. The Court further notes that this Application raises legal issues involving the alleged violation of the Applicant's rights during the proceedings before the national courts which led to his conviction for murder and sentencing to death by hanging.

21. In view of the foregoing, the Court finds that it is appropriate, in the interest of justice, to reopen the pleadings and consider the Respondent State's Response filed on 26 August 2024 to have been duly filed and be served on the Applicant for him to submit his Reply thereto, if any, within thirty (30) days. V. OPERATIVE PART
22. For these reasons: THE COURT Unanimously
- i. Orders that the proceedings in Application 001/2018 – Tembo Hussein v. United Republic of Tanzania are hereby reopened. ii. Orders that the Respondent State's Response filed on 26 August 2024 be deemed to have been duly filed and be served 6 on the Applicant, for him to submit his Reply thereto, if any, within thirty (30) days. Signed: Modibo SACKO, Vice-President; Robert ENO, Registrar. Done at Arusha, this Twenty-Eighth Day of October, in the Year Two Thousand and Twenty-four in English and French, the English text being authoritative. 7
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