

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS</b> <b>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

THE MATTER OF

NZIGIYIMANA ZABRON

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 051/2016



ORDER

(AMENDMENT OF PLEADINGS – ORAL PROCEEDINGS)

23 JUNE 2022

**The Court composed of:** Blaise TCHIKAYA, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, M-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO - 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"),<sup>1</sup> 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 KIVUYO in collaboration with the International Human Rights Clinic, Cornell University Law School.

Versus

UNITED REPUBLIC OF TANZANIA

Represented by:

Mr Gabriel P. MALATA, Solicitor General, Office of the Solicitor General

after deliberation,

*issues the following Order:*

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<sup>1</sup> Rule 8(2) of the Rules of Court, 2 June 2010.

## **I. THE PARTIES**

1. Mr. Nzigiymana Zabron (hereinafter, “the Applicant”) is a Burundian national who, at the time of filing this Application was incarcerated at Butimba Central Prison, following his conviction and sentence to death for murder. He alleges violation of several of his rights under the Charter.
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, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol, through which it accepted the jurisdiction of the Court to receive applications from individuals and NGOs (hereinafter referred to as “the Declaration”). 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.

## **II. SUBJECT OF THE APPLICATION**

3. From the record before the Court, the Applicant was charged before the High Court of Tanzania at Tabora, in Criminal Session No. 20 of 2008, with murder contrary to Section 196 of the Penal Code. He was convicted and sentenced to death on 25 June 2012.
4. The Applicant appealed his conviction and sentence to the Court of Appeal of Tanzania in Criminal Appeal No. 182 of 2013. On 25 September 2013, the Court of Appeal dismissed the appeal in its entirety.

5. The Applicant filed the Application at this Court alleging that the proceedings in the domestic courts violated his rights as guaranteed in the Charter, namely, the right to a fair trial (Article 7), the right to dignity (Article 5), the right to life (Article 4) and the right to consular assistance (Article 36 of the Vienna Convention on Consular Assistance).

### III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application was filed before this Court on 1 September 2016.
7. On 18 November 2016, the Court *suo motu*, issued an Order on Provisional Measures for the Respondent State to refrain from executing the death penalty against the Applicant pending the determination of the Application.
8. On 17 May 2017, the Respondent State filed its Response to the Application and on 14 July 2017 the Applicant filed the Reply to the Respondent State's Response.
9. On 16 May 2018, the Court accepted the offer from the International Human Rights Clinic of Cornell University Law School to provide the Applicant free legal representation, subject to receiving a signed Power of Attorney from the Applicant accepting the said representation.
10. On 6 August 2018, the Applicant filed his Submissions on Reparations.
11. On 14 September 2018, Cornell University provided the signed acceptance from the Applicant regarding their offer to represent him. By the same letter, Cornell University informed the Court that it has designated Advocate William Ernest Kivuyo to represent the Applicant.
12. On 24 October 2018, the Applicant sought leave to amend his pleadings. On 26 October 2018, the Registry sent to the Respondent State the notice transmitting the Applicant's request for leave to amend his pleadings. By the

same notice, the Registry requested the Respondent State to submit its Response within forty-five (45) days. This period elapsed on 17 December 2018 without a response from the Respondent State.

13. On 21 January 2019, the Respondent State filed a request for a six month extension of time to submit its Response to the Application and submissions on reparations.

14. On 19 February 2019, the Respondent State was informed that the Court had granted it an extension of three (3) months to file its Response to the Applicant's request to amend his Application and his submissions on reparations. This period elapsed with the Respondent State not having filed a Response.

15. On 18 December 2020, the Applicant, filed without leave of the Court, further amended pleadings.

#### **IV. PRAYERS OF THE PARTIES**

16. In the first request for amendment of pleadings, the Applicant prays the Court to grant the following orders:

- i. That the Applicant be permitted to amend – or file a supplement to – his 2016 Application and be given 90 days to do so;
- ii. That the Applicant be permitted to amend his 2018 Submissions on Reparations within the same period;
- iii. That the Applicant be permitted to adduce additional evidence under Rule 50 of the Court's rules in relation (1) and (2) above;
- iv. That drafting or issuing of the judgment in this matter be deferred until the Applicant has had the opportunity to make the contemplated further submissions; and
- v. That the case be heard in oral proceedings, pursuant to Rules 27 and 71 of the Rules of Court

17. The Applicant did not make any prayers with regard to the second request for amendment of pleadings

18. The Respondent State did not respond to the prayers of the Applicant as set out in his first request for amendment of pleadings.

## **V. ON THE REQUEST FOR AMENDMENT OF PLEADINGS**

19. In the request for leave to amend pleadings, the Applicant argues that this case raises complex legal issues, including the infringement of the Applicant's right to a fair trial and the legal propriety of the mandatory death penalty as a sentencing rule.

20. The Applicant further submits that, since he filed the Application without the benefit of representation by Counsel, he did not properly address the different human rights implications of his case. This was only possible after he obtained representation by Counsel.

21. The Respondent State has not responded to the request for leave to amend pleadings.

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22. The Court notes that Rule 47 of the Rules provides as follows:

1. A party may, subject to the approval of the Court, amend its pleadings before the close of pleadings.
2. A request for amendment of pleadings shall be made by a written notice explaining the specific part of the pleadings to be amended. The request shall also state the reasons thereof.
3. If the request is made after the close of pleadings, the Court may grant leave on exceptional basis.

23. The Court recalls that the Applicant filed his Application, his Reply to the Respondent State's Response to the Application and submissions on Reparations without the benefit of legal Counsel. It was only thereafter, that the Applicant received legal assistance through the International Human Rights Clinic of Cornell University Law School which designated Counsel to represent him.
24. The Court notes the reasons for the request to amend pleadings, most notably that this case raises complex legal issues, including alleged violations of the Applicant's right to a fair trial and the legal propriety of the mandatory death penalty as a sentencing rule. The Court also takes note of the Applicant's submission that without the benefit of legal assistance, he had not yet had the opportunity to properly address the different human rights implications of his case.
25. The Court further notes that the specific parts of the pleadings the Applicant wishes to amend, namely: the Application, his submissions on reparations and submission of further evidence have been clearly set out. The Court observes, therefore, that there is compliance with Rule 47(2) of the Rules.
26. Having reviewed the Applicant's Request to amend his pleadings, and the reasons for the same, the Court finds that these reasons warrant it to grant the Applicant's request amend his application and submissions on reparations and to submit further evidence. The Court, therefore, deems it reasonable and in the interest of justice to allow the amendment of the pleadings.
27. The Court notes that regarding the further amended Application filed on 18 December 2020, the Applicant filed the amended pleadings prior to the Court granting him leave to do so. However, the Court, in exercise of its discretion pursuant to Rule 90 of the Rules, finds that it is in the interest of justice that these further amended pleadings be deemed to have been properly filed.

## VI. ON THE REQUEST FOR ORAL PROCEEDINGS

28. The Applicant, in his first request to amend his pleadings, also included a prayer that the matter be heard in oral proceedings. The Applicant cited, without further details, Rule 27 and 71 of the Rules of Court of 2010 to support this request.

29. The Respondent State did not make any submissions in regard to this request for oral proceedings.

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30. The Court notes Rule 85 of the Rules which provides: “[O]n exceptional basis, the Court, after consideration of the written submissions, shall decide whether to hold a public hearing and fix a date for such hearing.” In addition, the Court notes the provisions of Rule 52 which states: “[S]ubject to the provisions of Rule 30 (1) of these Rules, the Court may hold a hearing on its own accord or upon a request of a party.”

31. In view of the above-stated Rules, the Court finds that it is appropriate to decide on this request after the Respondent State has been served with the amended pleadings and afforded an opportunity to file its Response, thereto, if any.

32. Pursuant to Rule 52 as read together with Rule 85 of the Rules, the Court considers that the determination of whether oral proceedings can be held in a matter can only be made after considering, in their totality, written submissions from both parties. The Court therefore holds that since the Respondent State’s Response to the amended pleadings and further evidence is pending, the Applicant’s request for oral proceedings is not ripe to be considered at this juncture of the proceedings.



## VII. OPERATIVE PART

33. For the above reasons:

### THE COURT:

*Unanimously*

- i. *Grants* the Applicant's request for leave to amend the pleadings.
- ii. *Orders* that the Applicant's amended pleadings filed on 18 December 2020 be deemed to have been duly filed and be served on the Respondent State.
- iii. *Defers* the decision on the Applicant's request to have oral proceedings to a later date.

Signed:

Blaise TCHIKAYA, Vice President;

and Robert ENO, Registrar.

Done at Arusha, this Twenty-Third Day of June in the Year 2022, in English and French, the English text being authoritative.



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