

016/2017
28/03/2019
(000577-000576) ON

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African Court on Human and Peoples' Rights

Dexter Eddie Johnson v. Republic of Ghana

Application 016/2017

Joint Separate Opinion of Judges Bensaoula Chafika and Marie-Thérèse Mukamulisa pursuant to Rule 60 of the Rules of Court

We by and large subscribe to the Order rendered by the majority, but would like to express our disagreement on point **(B)** of the operative provisions.

In the paragraph **(b)** of the operative provisions of the Order for Provisional Measures, the Court directs the Respondent to "report to the Court within sixty (60) days from the date of receipt of this Order, on the measures taken to implement this Order."

(1) In terms of Article 27 paragraph 2 of the Protocol and Rule 51 of the Rules, the Court shall, in cases of extreme gravity and urgency... adopt such provisional measures as it deems necessary.

The Court held in paragraphs 14 *et seq.* of the Order that "the situation raised in the present Application is of extreme urgency and gravity and represents a risk of irreparable harm, and that the circumstances require that an Order for provisional measures be issued".

In the case of death sentence, the stay of execution of this sentence was self-evident.

However, by granting the Respondent a period of two (2) months to "*report on the measures taken*", the Court ran counter to the very nature of the Order, which is executable forthwith, and to its characterization of the facts which it considers as being of extreme gravity.

Besides, it is apparent from the Court's jurisprudence that much shorter time-limits have been granted and in far less serious **circumstances**.

That the death penalty is the most serious sanction imposable on any convicted person, should have provided the explanation for reducing the time limit accorded to the Respondent State to make the report.

(2) In his Application, the Applicant prayed the Court to issue an Order for Provisional Measures and to allow the Respondent State **one month** to make its report. As this deadline is tied to the execution of the provisional measures sought, the Court, by granting a longer time limit without the Respondent requesting the same in its reply to the Applicant's request on this point, has ruled *ultra petita* because, even if the provisional measure lies within the Court's discretionary power,



the time limit non-the-less remains a right of the Parties, especially where any of them has raised the same in its Application or Reply.

(3) Although the Court did not grant the time-limit requested by the Applicant in favour of the Respondent, it all the same did not give reasons to back the time-limit prescribed in the operative provision of its Order; which runs counter to the terms of Rule 61 of the Rules.

(4) Moreover, it is apparent from the Court's jurisprudence that for similar cases (death penalty)¹, the time limit accorded to the Respondent was less than two months (60 days): as a matter of fact, in its previous Orders, the Court allowed a time limit of thirty (30) days. This instability in jurisprudence is not such as would enhance the reliability of the Court's decisions.

Chafika BENSAOULA, Judge

Marie-Thérèse MUKAMULISA, Judge



¹ See the Orders in:

- *Evodius Rutechura v. United Republic of Tanzania* (Application 004/2016).
- *Ally Rajabu and Others v. United Republic of Tanzania* (Application 007/2017).
- *Armand Guehi v. United Republic of Tanzania* (Application 001/2017).

2019-03-28

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