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AFRICAN UNION
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UNION AFRICAINE
UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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**IN THE MATTER OF**

**HABIYALIMANA AUGUSTINO**

**AND**

**MBURO ABDULKARIM**

**V.**

**THE UNITED REPUBLIC OF TANZANIA**

**APPLICATION N0. 015/2016**

# ORDER FOR PROVISIONAL MEASURES

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
ARUSHA
TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

**The Court Composed of;** Elsie N. THOMPSON, Vice President, Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSÉ, Ben KIOKO, Rafâa BEN ACHOUR, Solomy B. BOSSA, Angelo V. MATUSSE- 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 8(2) of the Rules of Court ("hereinafter referred to as the Rules"), Justice Augustino S. L. RAMADHANI, President of the Court and a national of Tanzania, did not hear the Application.*

In the matter of:

**IN THE MATTER OF**

**HABIYALIMANA AUGUSTINO AND**

**MBURO ABDULKARIM**

**V.**

**THE UNITED REPUBLIC OF TANZANIA**

After having deliberated,

Makes the following Order,

## I. Subject of the Application

1. The Court received, on 8 March 2016, an Application by Habiyalimana Augustino and Mburo Abdulkarim (hereinafter referred to as "the Applicants"), instituting proceedings against the United Republic of Tanzania (hereinafter referred to as "the Respondent"), for alleged violations of human rights.

2. The Applicants, who are Burundian nationals currently detained at Butimba Central Prison in Mwanza, were sentenced to death by the High Court of Tanzania at Bukoba on 31 May 2007. That death sentence was confirmed by the Court of Appeal, which is the highest Court in Tanzania, on 2 March 2012. The Applicants then made an application to the Court of Appeal for review of its judgment on 7 April 2012, which was registered as No. 05 of 2012 (sic).

3. The Applicants allege, *inter alia*, that:

   (a) Their conviction was based on evidence and exhibits that do not meet the required standard of proof, that is, beyond reasonable doubt.

   (b) The trial court erred by conducting the hearing in Swahili, a language unknown to them.

(c) The Application for review, despite being registered in 2012, has not been heard or listed to date.

## II. Procedure before the Court

4. The Application was received at the Registry of the Court on 8 March 2016.

5. Pursuant to Rule 36 of the Rules of Court, on 21 April 2016, the Registry served the Application on the Respondent.

## III. Jurisdiction

6. In dealing with an Application, the Court has to ascertain that it has jurisdiction on the merits of the case under Articles 3 and 5 of the Protocol.

7. However, in ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction.[1]

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[1] See Application 002/2013 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated15 March 2013) and Application 006/2012 African Commission on Human and Peoples' Rights v Kenya (Order for Provisional Measures dated15 March 2013); Application 004/2011 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 25 March 2011).

8. Article 3(1) of the Protocol provides that "the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned".

9. The Respondent ratified the Charter on 9 March 1984 and the Protocol on 10 February 2006, and is party to both instruments; it equally deposited, on 29 March 2010, a declaration accepting the competence of the Court to receive cases from individuals and Non-Governmental Organisations, within the meaning of Article 34(6) of the Protocol read together with Article 5(3) of the Protocol.

10. The alleged violations the Applicants are complaining about are guaranteed under Article 7(1) of the Charter and the Court therefore has jurisdiction *ratione materiae* over the Application.

11. In light of the foregoing, the Court has satisfied itself that, *prima facie*, it has jurisdiction to deal with the Application.

## IV. On the provisional measures

12. In their Application, the Applicants did not request the Court to order provisional measures.

13. Under Article 27(2) of the Protocol and Rule 51(1) of the Rules, the Court is empowered to order provisional measures *proprio motu* "in cases of extreme gravity and when necessary to avoid irreparable harm to persons" and "which it deems necessary to adopt in the interest of the parties or of justice".

14. It is for the Court to decide in each situation if, in the light of the particular circumstances, it should make use of the power provided for by the aforementioned provisions.

15. The Applicants are on death row and it appears from this Application that there exists a situation of extreme gravity, as well as a risk of irreparable harm to them.

16. Given the particular circumstances of the case, where the risk of execution of the death penalty will jeopardise the enjoyment of the rights guaranteed under Article 7(1) of the Charter, the Court has decided to invoke its powers under Article 27(2) of the Protocol.

17. The Court finds that the situation raised in the present Application is of extreme gravity and represents a risk of irreparable harm to the rights of the Applicants as protected by Article 7(1) of the Charter, if the death sentence were to be carried out.

18. Consequently, the Court holds that the circumstances require an Order for provisional measures, in accordance with Article 27(2) of the

Protocol and Rule 51 of its Rules, to preserve the *status quo,* pending the determination of the main Application.

19. For the avoidance of doubt, this Order shall not in any way prejudice any findings that the Court will make regarding its jurisdiction, as well as the admissibility and the merits of the Application.

**For these reasons,**

20. The Court, unanimously, orders the Respondent to:

a) refrain from executing the death penalty against the Applicants pending the determination of the Application.

b) report to the Court within sixty (60) days from the date of receipt of this Order, on the measures taken to implement the Order.

Done at Arusha, this 3rd day of June in the year 2016, in English, French, Portuguese and Arabic, the English version being authoritative.

**Signed:**

Elsie N. THOMPSON, Vice President

Gérard NIYUNGEKO, Judge

Fatsah OUGUERGOUZ, Judge

Duncan TAMBALA, Judge

Sylvain ORÉ, Judge

El Hadji GUISSÉ, Judge

Ben KIOKO, Judge

Rafâa BEN ACHOUR, Judge

Solomy B. BOSSA, Judge

Angelo V. MATUSSE, Judge; and

Robert ENO, Registrar.