

AFRICAN UNION
الاتحاد الأفريقي



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

IN THE MATTER OF

GOZBERT HENERICO

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO.056/2016

ORDER FOR PROVISIONAL MEASURES

18 NOVEMBER 2016



The Court Composed of; Sylvain ORÉ, President, Ben KIOKO, Vice President, Gérard NIYUNGEKO, El Hadji GUISSÉ, Rafâa BEN ACHOUR, Solomy B. BOSSA, Angelo V. MATUSSE, Ntyam O. MENGUE, Marie-Thérèse MUKAMULISA- Judges; and Robert ENO-Registrar

In the matter of:

GOZBERT HENERICO

V.

THE UNITED REPUBLIC OF TANZANIA

After having deliberated,

Makes the following Order,

I. Subject of the Application

1. The Court received, on 15 September 2016, an Application from Gozbert Henerico (hereinafter referred to as “the Applicant”), instituting proceedings against the United Republic of Tanzania (hereinafter referred to as “the Respondent”), for alleged violation of human rights.
2. The Applicant, who is currently detained at Butimba Central Prison, was sentenced to death by the High Court of Tanzania at Bukoba on 22 April 2015. That death sentence was confirmed by

the Court of Appeal, which is the highest Court in Tanzania, on 26 February 2016.

3. The Applicant alleges, *inter alia*, that:

- a) The High Court and the Court of Appeal erred in law and in fact to convict him on the charge of murder and sentence him to death by hanging despite the prosecution not having proved the case beyond reasonable doubt.
- b) Both Courts erred in law and in fact to convict him based on the evidence of voice and visual identification of PW1, PW2, PW3, PW4, and PW5 whose evidence was unreliable.
- c) Both Courts erred in law and in fact when they failed to corroborate the evidence of PW4 and PW5.
- d) The expunged evidence of exhibit P.4 was the only evidence that could have convicted him.
- e) Both Courts erred in law and in fact when they convicted him based on inconsistent and contradictory testimonies of Theonestina Grasian (PW1) and A/INSP Christopher Kapera (PW7) who were witnesses whose credibility was in question.
- f) The High Court and the Court of Appeal violated his right to a fair trial.
- g) Both Courts erred in law when they sentenced him to capital punishment which violates the right to life as enshrined in the

Universal Declaration for Human Rights, and Article 13(6)(d), 14 of the Constitution of Tanzania.

h) The High Court and Court of Appeal are in violation of Articles 1, 3, 5, 6, 7 (1) and 9(1) of the African Charter.

II. Procedure before the Court

4. The Application was received at the Registry of the Court on 15 September 2016.
5. Pursuant to Rule 35 of the Rules of Court, by a notice dated 15 November 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

¹ See Application 002/2013 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 15 March 2013) and Application 006/2012 African Commission on Human and Peoples' Rights v Kenya (Order for Provisional Measures dated 15 March 2013); Application 004/2011 African

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 Applicant is complaining about are guaranteed under Articles 3(2), 4 and 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 his Application, the Applicant did not request the Court to order Provisional Measures.

Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 25 March 2011).

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 Applicant is 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 the Applicant.
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 Articles 3(2), 4 and 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 Applicant as protected by Articles 3(2), 4 and 7(1) of the Charter, if the death sentence was 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 the Court shall make regarding its jurisdiction, 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 Applicant 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 18th day of November in the year 2016, in English and French, the English version being authoritative.

Signed:

Sylvain ORÉ, President



Ben KIOKO, Vice President



Gérard NIYUNGEKO, Judge



El Hadji GUISSÉ, Judge

Rafâa BEN ACHOUR, Judge

Solomy B. BOSSA, Judge

Angelo V. MATUSSE, Judge

Ntyam O. MENGUE, Judge

Marie-Thérèse MUKAMULISA- Judge; and

Robert ENO-Registrar.

