

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

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THE MATTER OF

LADISLAUS CHALULA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 003/2018

ORDER OF PROVISIONAL MEASURES

17 MAY 2019

1 **The Court composed of:** Sylvain ORÉ, President; Ben KIOKO, Vice-President;
2 Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, M-Thérèse MUKAMULISA, Suzanne
3 MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I.
4 ANUKAM, Judges; and Robert ENO, Registrar.

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6 In the matter of:

7

8 Ladislaus Chalula

9

10 Represented by Donald Omendi Deya, Counsel for Applicant, Pan African Lawyers
11 Union

12

13 versus

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15 UNITED REPUBLIC OF TANZANIA,

16

17 represented by:

18 Dr. Clement Julius MASHAMBA, Solicitor General, Attorney General's Chambers

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20 after deliberation,

21 *issues the following Order:*

22 **I. SUBJECT OF THE APPLICATION**

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24 1. On 2 March 2018, the Court received an Initial Application filed by Ladislaus
25 CHALULA (hereinafter referred to as “the Applicant,” against the United
26 Republic of Tanzania (hereinafter referred to as “the Respondent State,” for
27 alleged violation of his human rights.

28

29 2. The Applicant, currently imprisoned in Uyui Central Prison, Tabora, was
30 convicted of murder and sentenced to death by hanging on 17 March 1995, by
31 the High Court of Tanzania sitting in Tabora. On 10th June 1999, the Court of
32 Appeal in Tabora, Tanzania's highest court, upheld the sentence.

1 3. The Applicant alleges, *inter alia*, that the trial before the High Court was
2 marred by irregularities, and that both the High Court and the Court of Appeal
3 erred in their assessment of prosecution and visual identification evidence.

4
5 4. In the Application for interim measures dated on 06th May 2019, the Court was
6 requested to order provisional measures.

7 **II. PROCEEDINGS BEFORE THE COURT**
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9 5. The Application was received at the Court's Registry on 2 March 2018.

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11 6. In accordance with Rule 35 of the Rules of Court, the Application was served
12 on the Respondent State on 23 July 2018.

13 **III. JURISDICTION**
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15 7. When seized of an application, the Court conducts a preliminary examination
16 of its jurisdiction, pursuant to Articles 3 and 5 of the Protocol to the African
17 Charter on Human and Peoples' Rights on the Establishment of an African
18 Court of Human and Peoples' Rights (hereinafter referred to as "the
19 Protocol").

20
21 8. However, before ordering provisional measures, the Court need not satisfy
22 itself that it has jurisdiction on the merits of the case, but needs to simply
23 ensure that it has *prima facie* jurisdiction.¹

24
25 9. Article 3 (1) of the Protocol stipulates that "the jurisdiction of the Court shall
26 extend to all cases and disputes submitted to it concerning the interpretation and
27 application of the Charter, this Protocol and any other relevant Human Rights
28 instrument ratified by the States concerned."
29

1 ¹ See Application No. 002 /2013, *African Commission on Human and Peoples' Rights v. Libya* (Order of
2 provisional measures, 15 March 2013) and Application No. 006/2012, *African Commission on Human
3 and Peoples' Rights v. Kenya* (Order of provisional measures, 15 March 2013); Application No.
4 004/2011, *African Commission on Human and Peoples' Rights v. Libya* (Order of provisional measures,
5 25 March 2011).

1 10. On 21 October 1986, the Respondent State became party to the African
2 Charter on Human and Peoples' Rights (hereinafter referred to as "the
3 Charter") and the Protocol on 7 February 2006. It also made the declaration
4 on 29 March 2010 accepting the jurisdiction of the Court to receive
5 applications from individuals and non-governmental organizations in
6 accordance with Articles 34(6) and 5(3) of the Protocol read together.

7
8 11. The alleged violations which form the subject of the Application concern the
9 rights protected in Articles 3(2), 4 and 7(1)(c) of the Charter. The Court
10 therefore has jurisdiction *rationae materiae* to entertain the Application in the
11 present case.

12
13 12. In light of the foregoing, the Court has satisfied itself that it has *prima facie*
14 jurisdiction to examine the Application.

15 **IV. PROVISIONAL MEASURES**
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17 13. As stated in paragraph 4 above, the Applicant requests the Court to order
18 provisional measures.

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20 14. According to Article 27(2) of the Protocol and Rule 51(1) of the Rules of Court
21 "in cases of extreme gravity and urgency, and when necessary to avoid
22 irreparable harm to persons, the Court shall adopt such provisional measures
23 as it deems necessary" or "any interim measure which it deems necessary to
24 adopt in the interest of the parties or of justice."

25
26 15. It lies with the Court to decide in each situation whether, in light of the
27 particular circumstances of the case, it must exercise the jurisdiction conferred
28 upon it by the afore-cited provisions.

29
30 16. It is apparent from the case-file that the Applicant has been sentenced to
31 death.

1 17. In view of the circumstances of this case which bear the risk that execution
2 of the death sentence may impair the enjoyment of the rights set forth in
3 Articles 3(2), 7(1)(c) of the Charter, the Court decides to exercise its powers
4 under Article 27(2) of the Protocol.
5

6 18. Accordingly, the Court finds that the circumstances require an Order of
7 Provisional Measures pursuant to Article 27(2) of the Protocol and Rule 51 of
8 the Rules of Court, so as to preserve the *status quo*, pending the
9 determination of the main Application.
10

11 19. To remove any ambiguity, this Order is provisional and in no way prejudices
12 the decisions of the Court as to its jurisdiction, admissibility of the Application
13 and the merits of the case.

14 **V. OPERATIVE PART**
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16 20. For these reasons,

17 The Court,

18 *unanimously* orders the Respondent State:
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20 a) to stay execution of the death sentence, subject to the decision on the
21 main Application, and
22

23 b) to report to the Court within sixty (60) days of receipt of this Order, on
24 the measures taken to implement it.
25

26 Done at Arusha this Seventeenth Day of May in the Year Two Thousand and
27 Nineteen, in English and French, the English text being authoritative.
28

29 Signed:

30
31 Sylvain ORÉ, President

32 Robert ENO, Registrar