

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES P.O Box 6274 Arusha, Tanzania- Telephone: +255 732 979506/9; Fax. +255 732 979503</p>		

THE MATTER OF

KENNEDY OWINO ONYACHI

AND

CHARLES JOHN MWANINI NJOKA

v.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 003/2015
(REPARATIONS)

ORDER

20 JULY 2021



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"¹), Justice Imani D. ABOUD, President of the Court and a national of the United Republic of Tanzania did not hear the Application.

In the Matter of:

KENNEDY OWINO ONYACHI AND CHARLES MWANIKI NJOKA

Represented by:

Donal Deya, Chief Executive, *Pan-African Lawyers' Union (PALU)*

V.

UNITED REPUBLIC OF TANZANIA

Represented by:

- i. Mr Gabriel Paschal Malata, Solicitor General, Office of the Solicitor General
- ii. Ms. Sarah MWAIPOPO, Acting Deputy Attorney General and Director of Constitutional Affairs and Human Rights, Attorney General's Chambers

¹ Formerly Rule 8(2) of the Rules, 2 June 2010.

- iii. Ms. Nkasori SARAKEYA, Assistant Director of Human Rights, Principal State Attorney, Attorney General's Chambers
- iv. Mr. Elisha E. SUKA, Foreign Service Officer, Legal Affairs Unit, Ministry of Foreign Affairs and International Cooperation
- v. Mr. Mussa Mbura, Principal State Attorney, Director, Civil Litigation
- vi. Ms. Sylvia MATIKU, Principal State Attorney, Attorney General's Chambers

after deliberation,

issues the following Order:

I. PARTIES

1. The Applicants, Mr. Kennedy Owino Onyachi and Mr. Charles John Mwaniki Njoka, are nationals of the Republic of Kenya. They are convicted prisoners who are currently serving a sentence of thirty (30) years' imprisonment for the crime of aggravated robbery at the Ukonga Central Prison in Dar es Salaam, United Republic of Tanzania.
2. The Respondent is the United Republic of Tanzania. The Respondent became a State Party to the African Charter on Human and Peoples' Rights (hereinafter, referred to as "the Charter") on 18 February 1984, and the Protocol on 7 February 2006; and deposited the declaration accepting the competence of the Court to receive cases from individuals and Non-Governmental Organizations on 29 March 2010.

II. SUBJECT OF THE APPLICATION

3. In their Application, the Applicants alleged that their rights to equality and equal protection of the law, liberty and security, freedom against torture and ill-treatments and right to a fair trial had been violated by the Respondent State. The Applicants asserted that the said violations occurred after they were illegally arrested and extradited from Kenya to the Respondent State and were convicted of robbery on the basis of improperly obtained evidence.
4. On 28 September 2017, the Court rendered its judgment whose operative part on the merits reads as follows:
 - i. *Declares* that the Respondent has not violated Articles 3, 5, and 7(2) of the Charter.
 - ii. *Finds* that the Respondent violated Articles 1, 6 and 7(1) (a), (b) and (c) of the Charter.
 - iii. *Orders* the Respondent State to erase the effects of the violations established through the adoption of measures such as presidential pardon or any other measure resulting in the release of the Applicants' as well as any measure leading to erasing of the consequences of the violations established and to inform the Court, within six (6) months, from the date of this judgment of the measures taken.
 - iv. *Grants*, in accordance with Rule 63 of the Rules of Court, the Applicants to file submissions on the request for reparations within thirty (30) days hereof, and the Respondent to reply thereto within thirty (30) days of the receipt of the Applicant's submissions.
 - v. *Reserves* its ruling on the prayers for other forms of reparation and on costs.
5. Pursuant to this judgment of the Court on the merits of 28 September 2017, the Applicants, on 30 July 2018, filed their written submissions for reparations.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. On 3 October 2017, the Registry transmitted a certified true copy of the judgment on the merits to the Parties.
7. On 10 October 2017, the Applicants' representative, the Pan African Lawyers' Union (PALU) requested extension of time to file the Applicants' submissions on reparations. On 23 October 2017, the Court notified the Applicants that they had been granted thirty (30) days extension of time.
8. On 28 April 2018, the Court *suo motu* granted the Applicants additional fifteen (15) days extension of time.
9. The Applicants filed, through PALU, their submissions on reparations on 30 July 2018. This was transmitted to the Respondent State on 1 August 2018 with a request that it should file its response within thirty (30) days of receipt.
10. On 27 September 2018, the Respondent State requested for extension of time to file its submissions in response and it was granted thirty (30) days extension on 1 October 2018.
11. Despite additional extensions of time and reminders sent on 7 January 2018, 19 September 2019 and 25 March 2020, the Respondent State failed to file its submissions.
12. Pleadings were closed with effect from 16 November 2020 and the Parties were duly notified. By the same notice, the Parties were also notified that, in the absence of a response from the Respondent State, the Court will enter a judgment in default on the basis of the pleadings submitted by the Applicants in accordance with Rule 63 of the Rules.

13. On 12 May 2021, the Respondent State filed its Response to the Applicant's submissions on reparations, together with a request for leave to file its Response out of time. The Respondent State justified its delay by indicating that it was making consultations and deliberations with different Government Stakeholders before it was able to file its Response.

IV. ON THE REQUEST FOR REOPENING OF PLEADINGS

14. The Court notes that Rule 46(3) of the Rules provides that "the Court has the discretion to determine whether or not to reopen pleadings". Accordingly, when a party requests for the reopening of pleadings after the close of the same, the Court has the inherent power to order the reopening of pleadings and admit submissions filed by parties.

15. In the present Application, the Court notes that the Respondent State prayed the Court to reopen pleadings and grant leave to file its submissions out of time. It justifies its failure to comply with the deadlines to submit pleadings by pointing out that it needed time to make consultations and deliberations with different Government Stakeholders.

16. Having considered the Respondent State's justifications and in the interests of proper administration of justice, the Court decides to reopen pleadings.

17. For these reasons:

THE COURT

Unanimously,

- i. *Orders* that the proceedings in *Application 003/2015 Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (Reparations) are hereby reopened;
- ii. *Rules* that Respondent State's Response to the Applicants' submissions on reparations is deemed as properly filed, in the interest of justice; and
- iii. *Orders* the Applicants to submit his Reply to the Respondent State's Response within thirty (30) days of receipt thereof.

Signed:

Blaise TCHIKAYA, Vice President



Robert ENO, Registrar.



Done at Arusha, this Twentieth Day of July in the Year 2021, in English and French, the English text being authoritative.

