

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		

THE MATTER OF

CLEOPHAS MAHERI MOTIBA

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 055/2016

ORDER

(RE-OPENING PLEADINGS)

5 JULY 2021



The Court composed of: Vice-President, Blaise TCHIKAYA, Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Marie-Thérèse MUKAMULISA, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Stella I. ANUKAM, Dumisa 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"), Justice Imani D. ABOUD, President of the Court and a national of Tanzania did not hear the Application.

In the Matter of:

Cleophas Maheri MOTIBA

Represented by
Advocate Nelson Ndeki

Versus

UNITED REPUBLIC OF TANZANIA

Represented by
Mr. Gabriel Paschal Malata, Solicitor General

After deliberation,

Issues the following order:

I. THE PARTIES

1. Mr. Cleophas Maheri Motiba (hereinafter referred to as “ the Applicant”) is a Tanzanian national. The Applicant claims a violation of his right to work by the Ministry of Finance through unjust termination of his employment and forcefully retirement when Tanzania Revenue Authority effectively took over the functions of the Ministry of Finance.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter ”) on 21 October 1986 and the Protocol on 10 February 2006. It deposited, on 29 March 2010, the Declaration under Article 34(6) of the Protocol through which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal did not have any effect on pending cases as well as new cases filed before 22 November 2020, which is the day on which the withdrawal took effect, being a period of one (1) year after its deposit.¹

¹ *Andrew Ambrose Cheusi v United Republic of Tanzania*, ACHPR, Application No. 004/2015, Judgment of 26 June 2020, § 38.

II. SUBJECT OF THE APPLICATION

3. The Applicant alleges the violation of his right to work when his employment was terminated unjustly and forced into early retirement by the Respondent State in public interest on 30 June 1996.
4. Furthermore that even when, on 1 July 1996, the Tanzania Revenue Authority effectively took over the functions of the Ministry of Finance and he was forced into unlawful retirement, he still remained an employee of the Ministry of Finance, in the revenue section on permanent and pensionable basis and must therefore not suffer loss of any entitlements. He also claims that he should be paid general damages.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. The Application was filed on 14 September 2016 and served on the Respondent State on 15 November 2016 with a request to the Respondent State to file its response within sixty (60) days.
6. On 6 December 2016, the Court granted the the Applicant legal aid. Counsel Nelson Ndeki agreed to represent the Applicant on 7 December 2016 and the Respondent State was notified on 17 January 2017.
7. On 19 January 2017, the Respondent State filed a request for extension of time without specifying the time frame to file its Response to the Application on the grounds that it was still receiving information from stakeholders involved in the matter.
8. On 1 August 2017, Counsel for the Applicant filed an Application for judgment in default on the basis that the the Respondent had not filed its response to the

Application even after reminders were sent by the Court on 9 February 2017, which was not attached as stated in the Respondents Letter dated 6 February 2017.

9. On 27 June 2018, the parties were notified of the Close of Pleadings with effect from 26 June 2018.
10. On 9 September 2019, the Applicant filed a request for the Court to render a judgment in default because the Respondent State had neglected to file its Response to the Application even after it was reminded to do so by the Court on 9 February 2017, 28 August 2017 and 13 September 2017.
11. On 25 January 2018, the Registry sent a Rule 55 letter notifying the Respondent State that judgment would be rendered in default when if it does not file its Response. It was given forty-five (45) days to file its Response to the Application.
12. Pleadings were closed on 26 June 2018 and the parties were duly notified.
13. The Respondent State filed its Response to the Application on 17 August 2018, under Practice Direction No. 38 which allows for the Court's discretion to allow for parties to file submissions out of time and the same was transmitted to the Applicant on 29 August 2018. The reason given for the delay was that it was still consulting with stakeholders.
14. On 29 October 2018, the Applicant was granted an additional thirty (30) days to file his submissions on reparations after the initial timeframe had elapsed on 7 October 2018.
15. The Applicant filed his submissions on reparations after 2 reminders were sent on 7 October 2018 and 29 October 2018 and these were transmitted to the Respondent State on 22 March 2019.

16. The Applicant filed his Reply to the Respondent's Response on 3 January 2019.
17. The Respondent State was reminded on 22 March 2019 and on 13 May 2019 to file its Response on reparations. Following, this, the Applicant filed a request on 9 September 2020 to render judgment in default and the pleadings were subsequently closed again on 8 October 2019 before the Respondent State filed its submission on reparations.
18. On 30 September 2019, the Applicant filed a request for the consideration of his case to be expedited on humanitarian grounds, citing advanced age at sixty-three (63) years, hardships being experienced and the delay in getting justice for twenty-three (23) years since he was terminated in 1996.
19. On 2 January 2020 the Respondent State filed its Response to the Applicant's submissions on reparations out of time without requesting for leave to file the same and this was transmitted to the Applicant by letter on 11 May 2021 under Rule 46(3) the Applicant was given forty-five (45) days to file its Response. It is also the basis for to render an Order to re- open pleadings to allow the Applicant to file his Reply.

IV. ON REOPENING OF PLEADINGS

20. The Court notes that despite repeated reminder to the Respondent State, it did not file its Response to the Applicant's submissions on reparations and only did so on 20 March 2019, out of time.
21. The Court further observes that Rule 46(3) of the Rules provides that "the Court has the discretion to determine whether or not to reopen pleadings".
22. The Court recalls that, where the interests of justice so require, it is empowered by the Rules to order that pleadings be reopened or grant an extension of time for a Party to file its pleadings. In the present case, after due consideration, the Court

considers that it is appropriate, in the interests of justice, to use its discretion to allow the Respondent State's submissions on reparations filed out of time to be deemed as properly filed. Given that pleadings were already closed in this matter and taking into account the letter transmitted to the Applicant on 11 May 2021, notifying him that an Order would be issued to re-open pleadings following an inquiry on the status of his case.

23. The Court considers it necessary that pleadings be re-opened for purposes of :

- I. transmitting the Applicant's Response to the Respondent's Reply to the Application filed on on 3 January 2019 for information.
- II. accepting the Respondent State's submissions on reparations and availing the Applicant an opportunity to respond thereto.

V. OPERATIVE PART

For these reasons:

THE COURT

Unanimously,

Orders that:

- i. In the interests of justice, pleadings in Application No. 055 /2016 be and are hereby re-opened.
- ii. The Respondent State's submissions on reparations be deemed as duly filed and be transmitted to the Applicant for a Reply to be filed within forty-five days (45) of receipt of this Order.

Signed:

Blaise TCHIKAYA, Vice President;



Robert ENO, Registrar.



Done at Arusha, this 5th day of July in the year Two Thousand and Twenty One in English and French, the English text being authoritative.

