


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

**THE MATTER OF**

**MARTHINE CHRISTIAN MSUGURI**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION No. 052/2016**

**ORDER  
(RE-OPENING PLEADINGS)**

**8 MARCH 2022**



**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. ANUKA M, 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<sup>1</sup>(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:

Marthine Christian MSUGURI

*Represented by:*

Fulgence T. MASSAWE, Advocate, Legal and Human Rights Centre

Versus

UNITED REPUBLIC OF TANZANIA

*Represented by:*

- i. Mr Gabriel P. 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;
- iii. Ms Nkasori SARAKEYA, Assistant Director of Human Rights, Principal State Attorney, Attorney General's Chambers;

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<sup>1</sup>Formerly Rule 8(2) of the Rules of Court, 2 June 2010.

- 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; and
- vi. Ms Sylvia MATIKU, Principal State Attorney, Attorney General's Chambers.

after deliberation,

*Issues the following Order:*

## **I. PARTIES**

1. Marthine Christian Msuguri (hereinafter referred to as “the Applicant”) is a Tanzanian national who, at the time of filing the Application, was incarcerated at the Butimba Central Prison in Mwanza Region. On 30 July 2010, he was sentenced to death by hanging, following his conviction for the offence of murder. The Applicant alleges the violation of his rights to a fair trial in relation to proceedings before domestic courts.
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 to the Protocol on 10 February 2006. Furthermore, the Respondent State, on 29 March 2010, deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”), through which it accepted the jurisdiction of the Court to receive applications 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 has no bearing on pending cases and new cases filed before the withdrawal came into effect 22 November 2020.<sup>2</sup>

## **II. SUBJECT OF THE APPLICATION**

3. From the record before this Court, it emerges that, on 30 July 2010, the High Court of Tanzania sentenced the Applicant to death by hanging for the offence of murder, in Criminal Case N° 102 of 2010.

4. Dissatisfied by this decision, the Applicant decided to appeal before the Court of Appeal of Tanzania, which on 11 March 2013 dismissed the appeal entirely.

5. On 12 March 2013, the Applicant filed Application No 7 of 2013 before the Court of Appeal of Tanzania for review of its judgment. He alleges that the Application was neither heard nor listed for hearing up to the time he filed the Application before this Court.

## **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

6. The Application was filed on 9 September 2016 and served on the Respondent State on 16 November 2016.

7. The Parties exchanged pleadings on both the merits of the matter and reparations sought by the Applicant.

8. On 4 October 2018, the Court decided, in the interest of justice, to grant the request by the International Human Rights Clinic at Cornell University School of Law to represent the Applicant and in that regard, recognised Advocate Fulgence T. Massawe as Applicant's Counsel. The Counsel was accordingly availed the case

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<sup>2</sup> *Andrew Ambrose Cheusi v. United Republic of Tanzania*, ACtHPR, Application No. 004/2015, Judgment of 26 June 2020 (merits and reparations), §§ 37-39.

file for submission of pleadings.

9. On 1 June 2020, the Registry transmitted to the Respondent State the new submissions made by the aforementioned Counsel on behalf of the Applicant.

10. At the expiry of the time granted to do so, the Respondent State did not respond to these new pleadings.

11. Pleadings were closed on 2 February 2022 and the Parties were duly informed.

#### **IV. ON THE REASON FOR REOPENING OF PLEADINGS**

12. 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”. The Court further notes that pursuant to Rule 90 of the Rules, “Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice.”

13. The Court recalls that, in accordance with Rule 44(7) of the Rules, “If any party fails to file its pleadings and does not make a request for extension, its attention shall be drawn to Rule 63 of the Rules. In such instance, the defaulting party shall be granted not more than forty-five (45) days to file its pleadings.”

14. From the proceedings of the present matter as earlier recounted, it emerges that the Respondent State did not file any submission after it was granted time to respond to the new pleadings submitted by the appointed Counsel for Applicant. Noting that submissions made by the Applicant in the aforementioned pleadings involve new allegations, arguments and prayers on which the Court will be called to make a determination, the interest of justice demands that attention of the defaulting party, here the Respondent State, be drawn to the procedure applicable under Rule 44(7) read jointly with Rule 63 of the Rules.

15. The foregoing necessitates that pleadings be reopened for purposes of implementing the procedure prescribed under Rule 44(7) of the Rules, that is grant the Respondent State forty-five (45) days to respond to the new pleadings filed by the Applicant, failing which the default procedure will take its course.

16. For these reasons:

THE COURT

*Unanimously,*

- i. *Orders that the pleadings in Application 052/2016 - Marthine Christian Msuguri v. United Republic of Tanzania be, and are hereby reopened.*
- ii. *Orders the Respondent State to submit the Response to the Applicant's new pleadings within forty-five (45) days of receipt thereof.*

**Signed:**

Blaise TCHIKAYA, Vice-President:

Robert ENO, Registrar.

Done at Arusha, this Eighth Day of March, in the Year Two Thousand and Twenty-Two in English and French, the English text being authoritative.

