

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

**THE MATTER OF**

**CENTRE FOR HUMAN RIGHTS, INSTITUTE FOR HUMAN RIGHTS AND  
DEVELOPMENT IN AFRICA AND LEGAL AND HUMAN RIGHTS CENTRE**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**APPLICATION NO. 019/2018**

**ORDER**

**(REOPENING OF PLEADINGS)**

**31 MAY 2024**



**The Court composed of:** Modibo SACKO, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSOUOLA, Blaise TCHIKAYA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI – 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"),<sup>1</sup> Justice Imani D. ABOUD, President of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

CENTRE FOR HUMAN RIGHTS,  
INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA, AND  
LEGAL AND HUMAN RIGHTS CENTRE

*Represented by:*

- i. Professor Frans VILJOEN, Director, Centre for Human Rights, University of Pretoria;
- ii. Mr Michael NYARKO, Litigation Coordinator, Centre for Human Rights, University of Pretoria;
- iii. Advocate Gaye SOWE, Executive Director, Institute for Human Rights and Development in Africa; and
- iv. Advocate Fulgence MASSAWE, Legal and Human Rights Centre.

Versus

UNITED REPUBLIC OF TANZANIA

*Represented by:*

- i. Dr Boniface Naliya LUHENDE, Solicitor General, Office of the Solicitor General;

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

- ii. Ms Alice MTULO, Deputy Solicitor General, Office of the Solicitor General;
- iii. Mr Mark MULWAMBO Ag. Director, Civil Litigation, Principal State Attorney Office of the Solicitor General;
- iv. Mr Hangi M. CHANG'A, Assistant Director Human Rights and Election Petition, Office of the Solicitor General;
- v. Mr Stanley KALOKOLA, State Attorney, Office of the Solicitor General;
- vi. Ms Narindwa SEKIMANGA, State Attorney, Office of the Solicitor General; and
- vii. Mr Daniel NYAKIHA, State Attorney, Office of the Solicitor General.

After deliberation,

*Issues the present Order:*

## **I. THE PARTIES**

1. The Centre for Human Rights – University of Pretoria, the Institute for Human Rights and Development in Africa, and the Legal and Human Rights Centre (hereinafter referred to as “the Applicants”) are three (3) Non-Governmental Organisations (NGO) with Observer Status before the African Commission on Human and Peoples’ Rights, which allege violations of the rights of persons with albinism (“PWAs”) in the territory of the United Republic of Tanzania.
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 NGO (hereinafter referred to as “the Declaration”). 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 one (1) year after its deposit.<sup>2</sup>

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

3. The Applicants submit that throughout history, PWAs in the Respondent State's territory have endured serious and widespread threats and violations of their rights through discrimination, persecution, humiliation, killings and mutilations. The Applicants aver that PWAs face socio-political challenges, which compound their difficulties in accessing adequate education, health and other essential public services.
4. The Applicants further aver that the killings and mutilations have caused far-reaching psychological problems for PWAs. They submit that due to fear of death and mutilations, PWAs' movements are limited and so is their access to basic public services including children being restricted from going to school due to fear of putting their lives at stake.
5. It is the Applicants' submission that steps taken by the Respondent State to address the persecution, discrimination and killings have proven insufficient.

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

6. The Application was received at the Registry on 26 July 2018 and was served on the Respondent State on 5 September 2018.

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<sup>2</sup> *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, § 38.

7. On 19 September 2018, the Respondent State submitted the list of its representatives in the present Application.
8. The Respondent State failed to file its Response to the Application despite having benefited from three extensions of time on 14 November 2018, 17 December 2018 and 12 March 2019.
9. Pleadings were closed on 30 June 2022 and the Parties were duly notified.
10. On 22 March 2024, the Court granted leave to Ms. Muluka Miti-Drummond, and Ms. Ikponwosa Ero, who are current or former United Nations (UN) Independent Experts on the enjoyment of human rights by persons with Albinism; and Ms. Sarah L. Bosha, Expert on disability and health rights, to intervene as *amici curiae*. The amici curiae were directed to file their brief within thirty (30) days of receipt of the notice.
11. On 28 March 2024, the Registry informed the Parties that the Court had decided to hold a public hearing in the Application on 5 and 6 June 2024. The Parties were directed to file, within thirty (30) days of receipt of the notice, the list of their representatives as well as observations that they intend to make during the hearing.
12. On 20 April 2024, the amici curiae filed their brief in the matter. On 30 April 2024, the amici curiae filed their list of witnesses and summary of arguments.
13. On 2 May 2024, the Registry informed the Parties that the Court had decided *suo motu* to grant them an extension of time of fifteen (15) days to file their pleadings for the public hearing.
14. On 14 May 2024, the Respondent State filed the list of its representatives and indicated that it did not intend to call any witness for the public hearing.

15. On 15 May 2024, the *amici curiae* requested permission to amend their list of witnesses for the public hearing. On 20 May 2024, the Court granted said request and afforded the *amici curiae* seven (7) days to file their amended list of witnesses.
16. On 16 May 2024, the Court confirmed the date of public hearing as 5 June 2024 and transmitted the programme for the public hearing to the representatives of the Parties and the *amici curiae* all of whom confirmed their participation.
17. On 17 May 2024, the Applicants filed their list of witnesses, counsel and supplementary submissions on admissibility.
18. On 29 May 2024, the Respondent State filed a request for extension of time to file its response to the Applicants' Submission, Supplementary Submission on Admissibility, Affidavits in support of the Applicants' case, and Summary of Arguments from the *amici curiae*; and for the public hearing to be postponed.
19. On 30 May 2024, the Applicants filed their response to the Respondent State's request, which was transmitted to the Respondent State and *amici curiae* for information on 31 May 2024.

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

20. Rule 46(3) of the Rules provides that "the Court has the discretion to determine whether or not to reopen pleadings". Further, Rule 90 of the Rules stipulates that "[n]othing 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."

21. Rule 45(1) of the Rules on its part provides that “[p]leadings filed out of time limits set out in these Rules shall not be considered unless the Court decides otherwise”.
22. From the proceedings of the present matter, as earlier recounted, it emerges that the Respondent State did not file its Response to the Application and subsequent pleadings despite being granted several extensions of time to do so.
23. It also emerges from the records that, having submitted the names of its representatives for the public hearing slated to be held in the matter, on 5 June 2024, the Respondent State, on 29 May 2024, filed a request for extension of time to submit its response to the Application and other pleadings. In support of its request, the Respondent State avers that, after being served with the pleadings for the hearing, it realised that the matter involves information that require consultation with various government institutions. The Respondent State, therefore, prays to be granted an additional forty-five (45) days to file its response to the concerned pleadings.
24. The Court notes that, in response to the Respondent State’s request for additional time, and adjournment of the public hearing, the Applicants object on the ground that the Respondent State has had extensive time from the filing of the Application to prepare its Response, and granting the request would cause undue delay to the disposal of the matter. The Applicants however submit that should the Court decide to grant the request in the interests of justice, the additional time should be limited to thirty (30) days and strictly enforced; and the matter should, in any event, be disposed of at the next session of the Court.
25. The Applicants also submit that granting the Respondent State’s request would cause grave inconvenience and costs to them (and *amici curiae*) in the form of already booked flight tickets and accommodation to attend the public hearing, which would have to be forfeited. The Applicants pray the

Court to take this into consideration with regards to any future remedial orders that may be made with regards to costs.

26. The Court recalls that the Respondent State has not filed any pleadings in the present Application while such submissions would have aided the Court in a thorough consideration and determination of the matter. Further, the Application raises legal issues involving alleged violations of the right to life, freedom from torture, and prohibition of human trafficking, concerning PWAs as a vulnerable group. It is worth noting that although they object to the Court granting the request, the Applicants concede that the time prayed may be granted in the interests of justice.
27. Therefore, the Court considers it to be in the interests of justice that the Respondent State be granted additional time to file its response to the pleadings in the present Application.
28. Given that this matter had been set for public hearing on 5 June 2024, the Court considers that, as a consequence of the granting of additional time, the public hearing should be postponed to a subsequent time, to be set by the Court as will be communicated to the Parties.
29. Regarding the Applicants' submission that costs incurred owing to the postponement of the public hearing be considered in framing the remedies, the Court is of the view that such prayer is not fit to be examined in the present Order. It will consequently be addressed jointly with the substance of the Application.
30. In view of the foregoing, the reopening of pleadings in the written procedure is warranted and, in the circumstances of the Application, the Respondent State is granted forty-five (45) days to file the said response. The timeframe thus set will be strictly enforced and the Court will proceed based on the pleadings currently on file should the Respondent State fail to file the required submissions within the stipulated time.



31. The Court reserves consideration of the prayer for costs.

## V. OPERATIVE PART

32. For these reasons:


### THE COURT

*Unanimously*

- i. *Orders that the pleadings in Application 019/2018 – Centre for Human Rights, Institute for Human Rights and Development in Africa, and Legal and Human Rights Centre v. United Republic of Tanzania are hereby reopened.*
- ii. *Orders the Respondent State to submit its response to the Application and others pleadings within forty-five (45) days of receipt of this Order, failing which, the Court will proceed on the basis of the information currently on record.*
- iii. *Orders that the public hearing slated to be conducted on 5 June 2024 is postponed to a subsequent date as will be communicated to the Parties.*
- iv. *Reserves consideration of the Applicants' prayer for costs.*

### Signed:

Ben KIOKO, Dean; 

Robert ENO, Registrar. 

Done at Arusha, this Thirty-First Day of May, in the Year Two Thousand and Twenty-Four in English and French, the English text being authoritative.

