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AFRICAN UNION

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UNION AFRICAINE

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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

JOHN LAZARO

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO.003/2016

ORDER FOR PROVISIONAL MEASURES



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The Court Composed of; Elsie N. THOMPSON, Vice President, Gerard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSSE, Ben KIOKO, Rafâa BEN ACHOUR, Solomy Balungi BOSSA, Angelo Vasco MATUSSE- 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 8 (2) of the Rules of Court ("hereinafter referred to as the Rules"), Justice Augustino S.L. RAMADHANI, President of the Court and a national of Tanzania, did not hear the Application.

In the matter of:

JOHN LAZARO

V.

THE UNITED REPUBLIC OF TANZANIA

After having deliberated,

Makes the following Order,

I. Subject of the Application

1. The Court received, on 4 January 2016, an Application by John Lazaro (hereinafter referred to as 'the Applicant'), instituting proceedings against the United Republic of Tanzania (hereinafter referred to as 'the Respondent'), for alleged violations of human rights.
2. The Applicant, who is at Butimba Central Prison, was sentenced to death by the High Court of Tanzania at Bukoba on 6 August 2010. That death sentence was confirmed by the Court of Appeal, which is the highest Court in Tanzania on 28 November 2011. The Applicant then made an application to the Court of Appeal for Review of its judgement in 2012, and was registered as Number 08/2012 (sic).



3. The Applicant alleges, *inter alia*, that:
- (a) He had no legal representation for his Application for Review at the Court of Appeal and thus he was deprived of his right to be heard contrary to Article 3(2) of the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter").
 - (b) His conviction had been totally based on visual identification by a single witness and that it was not supported by all elementary factors.
 - (c) The Court of Appeal supported the finding of the High Court despite non-citation of specific legal provisions.
 - (d) The Court of Appeal seriously misdirected itself on points of law including satisfying itself that the prosecution evidence was beyond reasonable doubt.
 - (e) The Application for Review despite being registered in 2012, has not been heard or listed to date. Further, that the Court of Appeal is prejudiced against him since subsequent Applications for Review have been heard.

II. Procedure before the Court

4. The Application was received at the Registry of the Court on 4 January, 2016.
5. Pursuant to Rule 36 of the Rules of Court, on 25 January 2016, the Registry served the Application on the United Republic of Tanzania.

III. Jurisdiction

6. In dealing with an Application, the Court has to ascertain that it has jurisdiction on the merits of the case under Articles 3 and 5 of the Protocol.
7. However, in ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but simply needs to satisfy itself, *prima facie*, that it has jurisdiction.¹

¹ See Application 002/2013 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 15 March 2013) and Application 006/2012 African Commission

8. Article 3(1) of the Protocol provides that 'the jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned'.
9. The Respondent ratified the Charter on 9 March 1984 and the Protocol on 10 February 2006, and is party to both instruments; it equally deposited, on 29 March 2010, a declaration accepting the competence of the Court to receive cases from individuals and Non- Governmental Organizations, within the meaning of Article 34(6) of the Protocol read together with Article 5(3) of the Protocol.
10. The alleged violations the Applicants are complaining about are guaranteed under the scope of Article 7 of the Charter and Article 14 of the International Covenant on Civil and Political Rights ("hereinafter referred to as ICCPR"), and the Court therefore has *prima facie* jurisdiction *ratione materiae* over the Application. The Respondent acceded to the ICCPR on 11 June 1976 and deposited its instrument of accession on the same date.
11. In light of the foregoing, the Court has satisfied itself that, *prima facie*, it has jurisdiction to deal with the Application.

IV. On the provisional measures sought

12. In his Application, the Applicant did not request the Court to order provisional measures.
13. Under Article 27(2) of the Protocol and Rule 51(1) of the Rules, the Court is empowered to order provisional measures *proprio motu* in cases of extreme gravity and when necessary to avoid irreparable harm to persons", and "which it deems necessary to adopt in the interest of the parties or of justice.

on Human and Peoples' Rights v Kenya (Order for Provisional Measures dated 15 March 2013); Application 004/2011 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 25 March 2011).

14. It is for the Court to decide in each situation if, in the light of the particular circumstances, it should make use of the power provided for by the aforementioned provisions.
15. The Applicant is on death row and it appears from this Application that there exists a situation of extreme gravity, as well as a risk of irreparable harm to the Applicant.
16. Given the particular circumstances of the case, where there is a risk of execution of the death penalty which may jeopardise the enjoyment of the rights guaranteed under Article 3 and 7(1) of the Charter, the Court has decided to invoke its powers under Article 27(2) of the Protocol;
17. The Court finds that the situation raised in the present Application is of extreme gravity and represents a risk of irreparable harm to the rights of the Applicant as protected by Article 3 and 7(1) of the Charter, if the death sentence were to be carried out.
18. Consequently, the Court concludes that the circumstances require an Order for provisional measures, in accordance with Article 27(2) of the Protocol and Rule 51 of its Rules, to preserve the *status quo ante*, pending the determination of the main Application.
19. For the avoidance of doubt, this Order shall not in any way prejudice any findings the Court shall make regarding its jurisdiction, the admissibility and the merits of the Application.

For these reasons,

20. The Court, unanimously, orders the Respondent:
 - a) To refrain from executing the death penalty against the Applicant pending the determination of the Application.
 - b) To report to the Court within thirty (30) days from the date of receipt of this Order, on the measures taken to implement the Order.

Done at Arusha, this...^{18th}...day of...^{March}...in the year...²⁰¹⁶..., in English, French, Portuguese and Arabic, the English version being authoritative.

Signed:

Elsie N. THOMPSON, Vice President



Gérard NIYUNGEKO, Judge



Fatsah OUGUERGOUZ, Judge



Duncan TAMBALA, Judge



Sylvain ORÉ, Judge



EI Hadji GUISSÉ, Judge



Ben KIOKO, Judge



Rafâa Ben-ACHOUR, Judge



Solomy Balungi BOSSA, Judge



Angelo Vasco MATUSSE, Judge; and



Robert ENO, Registrar.

