

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		

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THE MATTER OF

NGASA NHABI

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 004/2018

ORDER OF PROVISIONAL MEASURES

20 MARCH 2019

1 **The Court composed of:** Sylvain ORÉ, President; Ben KIOKO, Vice-President;
2 Rafaâ BEN ACHOUR, Ângelo V. MATUSSE, M-Thérèse MUKAMULISA, Suzanne
3 MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA, Stella I.
4 ANUKAM, Judges; and Robert ENO, Registrar.

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6 In the matter of:

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8 Tembo HUSSEIN

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10 representing himself

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12 versus

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14 UNITED REPUBLIC OF TANZANIA,

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16 represented by:

17 Dr. Clement Julius MASHAMBA, Solicitor General, Attorney General's Chambers

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19 after deliberation,

20 *issues the following Order:*

21 **I. SUBJECT OF THE APPLICATION**

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23 1. On 2 March 2018, the Court received an Initial Application filed by Ngasa
24 NHABI (hereinafter referred to as "the Applicant," against the United Republic
25 of Tanzania (hereinafter referred to as "the Respondent State," for alleged
26 violation of his human rights.

27

28 2. The Applicant, currently imprisoned in Uyui Central Prison, was convicted of
29 murder and sentenced to death by hanging on 7 March 2008, by the High
30 Court of Tanzania sitting in Tabora. On 24 June 2011, the Court of Appeal in
31 Tabora, Tanzania's highest court, upheld the sentence. The Applicant lodged
32 an appeal for review before the Court of Appeal in Tabora, which was also
33 dismissed on 5 October 2015.

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3. The Applicant alleges, *inter alia*, that the trial before the High Court was marred by irregularities, and that both the High Court and the Court of Appeal erred in their assessment of prosecution and visual identification evidence.

4. In the Application, the Court was requested to order provisional measures.

II. PROCEEDINGS BEFORE THE COURT

5. The Application was received at the Court’s Registry on 2 March 2018.

6. In accordance with Rule 35 of the Rules of Court, the Application was served on the Respondent State on 23 July 2018.

III. JURISDICTION

7. When seized of an application, the Court conducts a preliminary examination of its jurisdiction, pursuant to Articles 3 and 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights (hereinafter referred to as “the Protocol”).

8. However, before ordering provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, but needs to simply ensure that it has *prima facie* jurisdiction.¹

9. Article 3 (1) of the Protocol stipulates 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.”

¹ See Application No. 002 /2013, *African Commission on Human and Peoples’ Rights v. Libya* (Order of provisional measures, 15 March 2013) and Application No. 006/2012, *African Commission on Human and Peoples’ Rights v. Kenya* (Order of provisional measures, 15 March 2013); Application No. 004/2011, *African Commission on Human and Peoples’ Rights v. Libya* (Order of provisional measures, 25 March 2011).

1 10. On 9 March 2006, the Respondent State became party to the African Charter
2 on Human and Peoples' Rights (hereinafter referred to as "the Charter") and
3 the Protocol on 10 February 2006. It also made the declaration on 29 March
4 2010 accepting the jurisdiction of the Court to receive applications from
5 individuals and non-governmental organizations in accordance with Articles
6 34(6) and 5(3) of the Protocol read together.

7
8 11. The alleged violations which form the subject of the Application concern the
9 rights protected in Articles 3(2), 4 and 7(1)(c) of the Charter. The Court
10 therefore has jurisdiction *rationae materiae* to entertain the Application in the
11 present case.

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13 12. In light of the foregoing, the Court has satisfied itself that it has *prima facie*
14 jurisdiction to examine the Application.

15 **IV. PROVISIONAL MEASURES**
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17 13. As stated in paragraph 4 above, the Applicant requests the Court to order
18 provisional measures.

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20 14. According to Article 27(2) of the Protocol and Rule 51(1) of the Rules of Court
21 "in cases of extreme gravity and urgency, and when necessary to avoid
22 irreparable harm to persons, the Court shall adopt such provisional measures
23 as it deems necessary" or "any interim measure which it deems necessary to
24 adopt in the interest of the parties or of justice."

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26 15. It lies with the Court to decide in each situation whether, in light of the
27 particular circumstances of the case, it must exercise the jurisdiction conferred
28 upon it by the afore-cited provisions.

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30 16. It is apparent from the case-file that the Applicant has been sentenced to
31 death.

1 17. In view of the circumstances of this case which bear the risk that execution
2 of the death sentence may impair the enjoyment of the rights set forth in
3 Articles 3(2), 7(1)(c) of the Charter, the Court decides to exercise its powers
4 under Article 27(2) of the Protocol.
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6 18. Accordingly, the Court finds that the circumstances require an Order of
7 Provisional Measures pursuant to Article 27(2) of the Protocol and Rule 51 of
8 the Rules of Court, so as to preserve the *status quo*, pending the
9 determination of the main Application.
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11 19. To remove any ambiguity, this Order is provisional and in no way prejudices
12 the decisions of the Court as to its jurisdiction, admissibility of the Application
13 and the merits of the case.

14 **V. OPERATIVE PART**
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16 20. For these reasons,

17 The Court,

18 *unanimously* orders the Respondent State:
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20 a) to stay execution of the death sentence, subject to the decision on the
21 main Application, and
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23 b) to report to the Court within sixty (60) days of receipt of this Order, on
24 the measures taken to implement it.
25

26 Done at Arusha this Twentieth Day of March in the Year Two Thousand and
27 Nineteen, in English and French, the English text being authoritative.
28

29 Signed:

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31 Sylvain ORÉ, President

32 Robert ENO, Registrar