AFRICAN UNION
الاتحاد الأفريقي

UNION AFRICAINE
UNIÃO AFRICANA

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

IN THE MATTER OF

NZIGIYIMANA ZABRON

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION N0.051/2016

ORDER FOR PROVISIONAL MEASURES

18 NOVEMBER 2016

The Court Composed of; Sylvain ORÉ, President, Ben KIOKO, Vice President, Gérard NIYUNGEKO, El Hadji GUISSÉ, Rafâa BEN ACHOUR, Solomy B. BOSSA, Angelo V. MATUSSE, Ntyam O. MENGUE, Marie-Thérèse MUKAMULISA- Judges; and Robert ENO- Registrar

In the matter of:

NZIGIYIMANA ZABRON

V.

THE UNITED REPUBLIC OF TANZANIA

After having deliberated,

Makes the following Order,

I. Subject of the Application

1. The Court received, on 1 September 2016, an Application from Nzigiyimana Zabron (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 currently detained at Butimba Central Prison, was sentenced to death by the High Court of Tanzania at Tabora on 25 June 2012. The death sentence was confirmed by

the Court of Appeal, which is the highest Court in Tanzania, on 25 September 2013.

3. The Applicant alleges, *inter alia*, that:

a) During the trial at the High Court in Tabora his fundamental rights were violated when his evidence was not taken into consideration and reasons for rejection therefore were not given.

b) His right to a fair trial was violated as he was denied the right to an interpreter and could not understand the language used at the Court.

c) The Trial Court and the Court of Appeal made an improper and discriminatory evaluation of evidence when it relied on evidence given by Prosecution witnesses who lacked credibility.

d) The Prosecution did not prove its case beyond reasonable doubt, particularly the doctrine of recent possession with regards to the ownership of a bicycle.

II. Procedure before the Court

4. The Application was received at the Registry of the Court on 1 September 2016.

5. Pursuant to Rule 35 of the Rules of Court, by a notice dated 16 November 2016, the Registry served the Application on the Respondent.

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]

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 Organisations, within the meaning of Article

[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 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).

34(6) of the Protocol read together with Article 5(3) of the Protocol.

10. The alleged violations the Applicant is complaining about are guaranteed under Articles 3(2) and 7(1)(c) of the Charter, and the Court therefore has jurisdiction *ratione materiae* over the Application.

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

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".

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 the risk of execution of the death penalty will jeopardize the enjoyment of the rights guaranteed under Articles 3(2) and 7(1)(c) 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 Articles 3(2) and 7(1)(c) of the Charter, if the death sentence were to be carried out.

18. Consequently, the Court holds 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,* 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 to:

a) refrain from executing the death penalty against the Applicant pending the determination of the Application.

b) report to the Court within sixty (60) days from the date of receipt of this Order, on the measures taken to implement the Order.

Done at Arusha, this 18th day of November in the year 2016, in English and French, the English version being authoritative.

Signed:

Sylvain ORÉ, President

Ben KIOKO, Vice President

Gérard NIYUNGEKO, Judge

El Hadji GUISSÉ, Judge

Rafâa BEN ACHOUR, Judge

Solomy B. BOSSA, Judge

Angelo V. MATUSSE, Judge

Ntyam O. MENGUE, Judge

Marie-Thérèse MUKAMULISA- Judge; and

Robert ENO-Registrar