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

THE MATTER OF

TEMBO HUSSEIN

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION No. 001/2018

ORDER FOR PROVISIONAL MEASURES

11 FEBRUARY 2019



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

*In the matter of*

Tembo HUSSEIN

unrepresented

*versus*

UNITED REPUBLIC OF TANZANIA

represented by:

Dr. Clement J. MASHAMBA, Solicitor General, Attorney General's Chambers

after deliberation

*issues the following Order:*

## **I. SUBJECT OF THE APPLICATION**

1. On 2 March 2018, the Court received an Application filed by Tembo Hussein (hereinafter referred to as "the Applicant") against the United Republic of Tanzania (hereinafter referred to as "the Respondent State"), for alleged violation of his human rights.
2. The Applicant who is currently in detention at Uyui Central Tabora Prison was, on 11 October 2013, convicted for murder and sentenced to death by hanging by the High Court of Tanzania sitting at Tabora. The sentence was, on 7 August 2017, upheld by the Court of Appeal sitting at Tabora, the highest court in Tanzania.
3. The Applicant alleges, *inter alia*, that the trial at the High Court was vitiated by irregularities, that the assessors did not exercise their right under Section

177 of the Tanzania Evidence Act Cap. 6 RE 2002 to put questions to the witnesses, and violated Article 13 of the Constitution of Tanzania.

4. In the Application, Court was requested to issue an Order for Provisional Measures.

## II. SUMMARY OF THE PROCEDURE BEFORE THE COURT

5. The Application was received at the Registry on 2 March 2018.
6. It was served on the Respondent State on 23 July 2018, pursuant to Rule 35 of the Rules of Court.

## III. ON JURISDICTION

7. In dealing with any Application filed before it, the Court must conduct 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 on Human and Peoples' Rights (hereinafter referred to as "the Protocol").
8. However, before issuing an Order for Provisional Measures, the Court need not establish that it has jurisdiction on the merits of the case, but simply satisfy itself that it has *prima facie*<sup>1</sup> jurisdiction.
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".

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<sup>1</sup> See Application No. 002/2013. *African Commission on Human and Peoples' Rights v. Libya* (Order of 15/3/2013 for Provisional Measures); Application No. 006/2012. *African Commission on Human and Peoples' Rights v. Kenya* (Order of 15/3/2013 for Provisional Measures) and Application No. 004/2011. *African Commission on Human and Peoples' Rights v. Libya* (Order of 25/3/2011 for Provisional Measures)

10. The Respondent State became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 9 March 1984 and to the Protocol on 10 February 2006. It also, on 29 March 2010, made the declaration accepting the jurisdiction of the Court to receive applications from individuals and non-governmental organizations in accordance with Articles 34(6) of the Protocol read together with 5(3) thereof.
11. The alleged violations, subject of the Application, are in respect of the rights protected by Articles 3(2), 4 and 7 (1)(c) of the Charter. The Court therefore has jurisdiction *rationae materiae* to hear the case.
12. In light of the foregoing, the Court is satisfied that it has *prima facie* jurisdiction to examine the Application.

#### IV. ON THE PROVISIONAL MEASURES REQUESTED

13. As indicated in paragraph 4 above, the Applicant prays the Court to issue an Order for Provisional Measures.
14. In accordance with Article 27(2) of the Protocol and Rule 51(1) of its Rules, "in cases of extreme gravity or urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary", or the measures which it deems necessary to adopt in the interest of the parties or of justice".
15. It lies with the Court to decide for each case, whether in light of the particular circumstances of the matter, it should exercise the jurisdiction conferred on it by the aforementioned provisions.
16. In the instant case, the file record indicates that the Applicant was sentenced to death.

17. In view of the circumstances of this case and the risk that execution of the death penalty may jeopardise the enjoyment of the rights provided under Articles 3(2) and 7(1)(c) of the Charter, the Court decides to exercise its powers under Article 27(2) of the Protocol.

18. The Court therefore holds that the said circumstances require it to order Provisional Measures, in accordance with Article 27(2) of the Protocol and Rule 51 of its Rules, so as to preserve the *status quo* pending a determination of the main Application.

19. For the avoidance of doubt, this Order is necessarily provisional in nature and in no way prejudices the findings the Court might make as regards its jurisdiction, admissibility of the Application and the merits of the case.

#### VI. OPERATIVE PART

20. For these reasons:

The Court,

*unanimously*, orders the Respondent State to:

(a) *stay* execution of the death sentence handed down against the Applicant, pending its determination of the main Application; and

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

Done at Arusha this Eleventh Day of February in the Year Two Thousand and Nineteen, in English and French, the English text being authoritative

Signed:

Sylvain ORÉ, President



Robert ENO, Registrar

