AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

BASHIRU RASHID OMAR

V

UNITED-REPUBLIC OF TANZANIA

APPLICATION NO. 045/2020

ORDER

(REOPENING OF PLEADINGS)

24 NOVEMBER 2026



The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – 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"),[1] Justice Imani D. ABOUD, Judge of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Bashiru Rashid OMAR

Represented by:
Alphonse VAN, Advocate of the High Court in Abidjan, Côte d'Ivoire

Versus

THE UNITED REPUBLIC OF TANZANIA

Represented by:

i. Dr. Ally POSSI, Solicitor General, Office of the Solicitor General; and
ii. Ms. Pauline MDENDEMI, State Attorney, Office of the Solicitor General.

After deliberation,

Issues this Order:

[1] Rule 8(2), Rules of Court, 2 June 2010.

I. PARTIES

1. Bashiru Rashid Omar (hereinafter referred to as "the Applicant") is a Tanzanian national. At the time of filing the Application, he was incarcerated at the Institute of Education for Offenders in Zanzibar, in the United Republic of Tanzania, awaiting the execution of the death sentence by hanging following his trial, conviction, and sentencing for the offence of murder. He alleges that his rights were violated during proceedings before the domestic courts.

2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "Respondent State") which became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 21 October 1986 and to the Protocol on 10 February 2006. Furthermore, on 29 March 2010, the Respondent State deposited the Declaration prescribed under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications filed by individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited, with the African Union Commission, an instrument of withdrawal of the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before the withdrawal comes into effect, one year after the deposit, that is, on 22 November 2020.[2]

II. SUBJECT OF THE APPLICATION

3. It emerges from the record that, on 29 August 2003, the Applicant killed his son after the child's mother attempted to deny the Applicant access to his child. The Applicant has confirmed the murder in his Application, but has alleged that he was not of a sound mental state at the time of the killing.

[2] *Andrew Ambrose Cheusi v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 219, §§ 35-39.

4. On 28 September 2016, the High Court of Zanzibar convicted the Applicant of murder and mandatorily sentenced him to death by hanging.

5. On 13 December 2018, the Court of Appeal of Tanzania, sitting at Zanzibar, dismissed the Applicant's appeal against his conviction and sentence.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

6. The Application, together with a request for provisional measures and legal aid, was received by the Court, on 21 November 2020.

7. The Application was served on the Respondent State on 2 December 2020, which was granted 15 days to file its observations on the request for provisional measures and 90 days to respond to the Application.

8. On 11 December 2020, the Court approved the Applicant's request to be provided with legal aid and appointed Advocate Alphonse Van as his pro bono counsel.

9. On 4 February 2021, the Respondent State filed its Response to the Applicant's request for an order for provisional measures staying the execution of the death penalty. The Court served this Response on the Applicant on 9 February 2021.

10. On 26 February 2021, the Court issued an ruling on provisional measures and ordered a stay of the Applicant's death sentence pending the outcome of this Application.

11. On 26 March 2021, the Applicant filed supplementary pleadings which were served on the Respondent State on 30 June 2022.

12. On 13 April 2023, the Respondent State applied for an extension of time to filing its Response. The Court granted a 30 day extension of time on 6 October 2023.

13. On 20 December 2023, the Respondent State filed its Response which was served on the Applicant on 27 February 2024.

14. On 10 December 2024, the Court wrote to the Applicant to remind them to file a Reply to the Response and provided, *suo motu*, a thirty (30) day extension to the deadline for filing a Reply. The Applicant did not submit a Reply to the Response.

15. Pleadings were closed on 6 May 2026 and the parties were duly notified.

IV. THE REOPENING OF PLEADINGS

16. Rule 46(3) of the Rules provides that "the Court has the discretion to determine whether or not to reopen pleadings". The Court notes that pursuant to Rule 90 of the Rules, "Nothing 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."

17. Furthermore, the Court notes that Rule 55 of the Rules provides as follows:

> i. The Court may, of its own accord or at the request of a party, obtain any evidence which in its opinion may provide clarification of the facts of a case. The Court may decide to hear a witness, an expert or any other person whose evidence, assertions or statements it deems likely to assist it in carrying out its task.
> ii. The Court may, for purposes of obtaining information, request any person or institution of its choice to express an opinion or submit a report to it on any specific point.

iii. The Court may, at any time during the proceedings, assign one or more Judges to conduct an enquiry, carry out a visit to the scene or take evidence in any other manner, including to take testimony on oath using appropriate means.

18. The Court observes that neither the Applicant nor the Respondent State have filed copies of the judgments handed down by the domestic courts, or submitted evidence that explains the delay in the Applicant being tried and convicted.

19. Considering that the Applicant has alleged that his right to a fair trial has been violated by the Respondent State, including his right to be tried within a reasonable time, the Court, *suo motu*, has decided to reopen pleadings in order for the Parties to file copies of the judgments issued by the domestic courts, and submit further evidence that explains the delay in the Applicant being tried and convicted.

20. Therefore, the Court holds that it is in the interests of justice to reopen pleadings, and orders that, within 30 days of this order being notified to the parties: (i) the Parties file a copy of the judgment handed down by the High Court of Zanzibar on 28 September 2016, together with any transcript of the proceedings before that court; (ii) the parties to file a copy of the judgment handed down by the Court of Appeal of Tanzania on 13 December 2018, together with any transcript of the proceedings before that court; (iii) the Parties to file a copy of any other judgment, order, or transcript of court proceedings that relate to the Applicant's conviction and sentencing; and (iv) the Parties be permitted to each submit further evidence that explains the delay in the Applicant being tried and convicted.

V. OPERATIVE PART

21. For these reasons:

THE COURT

Unanimously

i. *Orders* that the proceedings in Application 045/2020 – *Bashiru Rashid Omar v. United Republic of Tanzania* are hereby reopened.

ii. *Orders* the Parties to file a copy of the judgment handed down by the High Court of Zanzibar on 28 September 2016, together with any transcript of the proceedings before that court.

iii. *Orders* the Parties to file a copy of the judgment handed down by the Court of Appeal of Tanzania on 13 December 2018, together with any transcript of the proceedings before that court.

iv. *Orders* the Parties to file copies of any other judgment(s), order(s), or transcript(s) of court proceedings that relate to the Applicant's conviction and sentencing.

v. *Orders* the Parties be permitted to each submit further evidence that explains the delay in the Applicant being tried and convicted.

vi. *Orders* the Parties to file the information requested by the Court under (ii), (iii), (iv), (v) above, within thirty (30) days from the date of notification of this Order.

Signed:

Blaise TCHIKAYA, President;

Robert ENO, Registrar.

Done at Arusha, this Twenty-Fourth Day of November, in the Year Two Thousand and Twenty-Six in English and French, the English text being authoritative.