AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Joint Separate Opinion of
Judge Blaise Tchikaya and Judge Stella I. Anukam

In

Application No. 046/2020

Ado Shaibu and Others v. United Republic of Tanzania

Judgment of 6 March 2026

1. Like the majority of our Honourable Colleagues, we ruled in favour of the operative part of the Court's judgment rendered on 6 March 2026 in the matter of *Ado Shaibu and Others v. United Republic of Tanzania*. Our concurrence notwithstanding, we are of the view that on certain points, the Court should have better elucidated the reasons for its decision,[1] or amplified the same, with a view to clarify its decision beyond equivocation.

2. A few questions bear scrutiny as regards the scope of the case at hand. The Court rightly considered that it was primarily dealing with a dispute over the legality of national electoral law.

3. *The Ado Shaibu case* can be divided into different parts, namely, (I) a first part relating to assaults on individuals, an issue not considered in this case, and (II) a second part relating to the irregularity of electoral standards.

[1] AfCHPR, *Ado Shaibu and Others v. Tanzania,* Application No. 046/2020, 6 March 2026.

I. Distinguishing the elements of the case

4. The case concerns five Tanzanian nationals,[2] members of a political party, who brought an electoral dispute before the Court, the content of which it was apprised. They alleged violations, including physical ones, committed by the Respondent State in connection with the 2020 general elections. According to the Applicants, the Respondent State had sought, by these abuses, to:

> restrict their rights as duly registered candidates and voters, and their right to campaign and to participate in elections.[3]

5. These accusations should be assessed differently and separately from the physical violence alleged in the Application. The Applicants report that they were:

> victims of discrimination, violence and torture, intimidation, threats, arrests and detentions by the Tanzanian police forces.[4]

6. This latter allegation of physical violence is linked to a normative dispute that the Court is examining jointly with the present case. Sanctions under international human rights law cannot be interchangeable. Physical and moral damage resulting from assaults gives rise to different forms of reparation from those resulting from legal violations or irregularities.

7. It is certainly accepted that there is no hierarchy of human rights, irrespective of whether they are subjective or real rights and irrespective of the category under which they fall. However, the procedural aspects and their applicable litigation redress mechanism may differ. Sanctions for the violations of electoral rights are significantly different from those for

[2] The Applicants are Mr Ado Shaibu, Mr Ezekiah, Mr Dibogo Wenje, Mr Omar Mussa Makame, Mr Enock Weges Suguta, Mr Kassim Ali Haji and Ms Dorah Seronga Wangwe, members of the political party known as *the Alliance for Change and Transparency Wazalendo* (the ACT Wazalendo party).
[3] AfCHPR, *see Judgment,* § 4 and § 5.
[4] *Idem.*, *Judgment,* § 4.

violence, assaults and physical attacks on individuals, which are sometimes serious crimes.[5] This is what the Applicants seem to suggest when they pray the Court to:

> Order the Respondent State to investigate and bring to account all persons found to be responsible for the violation of the rights of the Applicants.[6]

8. The Court could have separated the judicial examination of the physical violence from the electoral dispute itself, notwithstanding that the physical violence was, in this case, only a consequence.[7] In defence of the Court's approach in its judgment, it should be understood that the Applicants do not seem to attach much importance to this aspect of the dispute. They do not elaborate on it, merely asking the Respondent State to conduct 'investigations". The Applicants come before the judge to request an investigation, an approach that is often unsuccessful.

9. The Court also stated in its reasoning that:

> the Applicants have, without substantiation, also made allegations, that there was a climate of fear during the period of the general elections and therefore they could not exhaust local remedies. […] The Court notes that the Applicants did not exhaust local remedies and simply made general statements relating to alleged violation of rights.

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[5] This issue is well known in legal doctrine through the work of Kéguelin de Rozières (G.), *Crimes et délits électoraux,* Doctoral thesis in law, Paris, 1904, p. 37. See also: Corbin (A.), L'histoire de la violence dans les campagnes françaises au XIXe siècle. Esquisse d'un bilan, *Ethnologie française,* vol. XXI, no. 3, 1991, pp. 224-235.

[6] AfCHPR, see *Judgment,* § 20(iv) It should be noted that only proven assertions form the basis of judicial decisions. In the 2013 *Abubakari* case (AHRC, *Mohamed Abubakari v Tanzania*, 3 June 2016), the Court emphasised that "The Court holds that it is incumbent on the Party purporting to have been a victim of discriminatory treatment to provide proof thereof". This is the decisive nature of the evidence presented before a court. It is considered that, to the extent that the allegations are proven, the ruling must reflect this.

[7] See Report of the AU Panel of the Wise, *Election-related Conflict and Political Violence: Strengthening the Role of the African Union in Conflict Prevention, Management and Resolution,* AU, 2012, 120 p.; Alihodzic (S.) and Asplund (E.), *Guide to Preventing and Mitigating Election-Related Violence,* IDEA International, Stockholm, 2013, 112 p.; Depending on their research focus, studies on the subject show that violence during the election period, before or after, can lead to crimes that sometimes need to be treated as such.

10. This Court will therefore only rule on the substantive issue in the case, namely that:

> Article 41(7) of the Respondent State's Constitution ousts the jurisdiction of national courts to hear cases related to presidential elections, therefore, violating Article 7(1) of the Charter.[8]

11. Clearly, this conclusion is similar to that of the *Kambole* decision, a similarity that the decision acknowledges.

II. The identity of the instant case and the previous Kambole case

12. The above conclusion is identical to that in the *Kambole* case. However, it is not certain that the Court draws sufficient conclusions from this, particularly with regard to the admissibility of the case. In defence of its decision, the Court notes that the Applicants are not the same, that the irregularity disputed by the Applicants has not disappeared... and that they do not have standing to request a compliance hearing in respect of *the Kambole* judgment.[9]

13. The conclusion in § 97, which is the only point in the operative part of the judgment that concerns the merits of the case, is identical to that in the operative part of the 2020 *Kambolé* decision.[10]

14. The decision handed down by the Court on 15 July 2020 in the *Jebra Kambole* application is unequivocal, stating in point (iv) that:

> Article 41(7) of the Respondent State's Constitution, in so far as it bars courts from inquiring into the election of a presidential candidate who

[8] AfCHPR, *Ado Shaibu judgment*, Operative Part, § 98.
[9] *Ibid.*, § 97.
[10] AfCHPR, *Jebra Kambole v. Tanzania,* 15 July 2020.

> has been declared elected by the Electoral Commission, violates Article 2 of the Charter.

15. As far as these elements are concerned, the two decisions are so similar that one wonders why the Court gives the impression of disregarding *res judicata*[11] and, consequently, *non bis in idem*.[12] Furthermore, it is clear that the dispute brought before the Court raises issues that are similar to those raised in *the Kambole case* of 2020. The Court provides an explanation that clarifies its reasoning. It explains its reasoning on this point[13] as follows:

> The present case was not settled by the Kambole case. […] the implementation period of two years which was ordered in the Kambole case has no relation with this present case. […] the Applicants were not parties to the Kambole case and therefore, they would have no standing to request for a compliance hearing.

16. As its decision boiled down to the single factor mentioned above (in paragraphs 9 and 12), the Court could have simply referred to the *Kambole* decision of 15 July 2020. However, while we agree with the Court's unanimous ruling, it is not clear that the three points mentioned above (in § 97) answer all the questions. This is a public policy and regulatory dispute brought by joint application. The Court has already ruled on the issue of public interest, namely legal irregularity, so that the application should have been inadmissible.

17. It follows that all the judges agree that the *res popularis* brought before the Court by *Mr Jebra Kambole* in 2020 was simply renewed through *the Ado Shaibu and others case* against Article 41(7) of the Respondent State's Constitution. If the court chose to rule on the merits of the case without

[11] *Protocol establishing the African Court* (1998), Article 28: "1. The Court shall render its judgment within ninety (90) days of having completed its
deliberations. 2. The judgment of the Court decided by majority shall be final and not subject to appeal".
[12] *African Charter on Human and Peoples' Rights* (1981), Article 56(7): "Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter".
[13] AfCHPR, *Ado Shaibu judgment,* § 97.

further "formality", it was undoubtedly to better remind the Respondent State of its failure to comply with the previous decision.[14]

Done at Arusha, this Sixth Day of March in the year Two Thousand and Twenty-Six, the English and French versions being authoritative.

Blaise TCHIKAYA

President

Stella I. ANUKAM

Judge

[14] This failure to comply is acknowledged by the Respondent State itself, when it states that: “rather than alleging a violation of Article 7(1) of the Charter, the Applicants should have invoked the compliance procedure under Rule 81(3) of the Rules of Court and requested a compliance hearing” (see § 69 of the Judgment).