


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

SAMWEL GITAU SAITOTI & ANOTHER

v.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 007/2020

**ORDER
(STRIKE OUT)**

25 MARCH 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 Grace W. KAKAI, Deputy 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 Court¹ (hereinafter referred to as “the Rules”), Justice Imani D. ABOUD, Judge of the Court and a national of Tanzania, did not hear the Application.

In the Matter of:

Samwel Gitau SAITOTI and Michael Kimani PETER

Represented by

Donald Omondi DEYA, Executive Director, Pan African Lawyers Union (PALU).

Versus

UNITED REPUBLIC OF TANZANIA

Represented by

Dr Ally POSSI, Solicitor General, Office of the Solicitor General;
Stanley KALOKOLA, State Attorney, Office of the Solicitor General.

After deliberation,

Renders this Order:

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

I. THE PARTIES

1. Mr. Samwel Gitau Saitoti and Mr. Michael Kimani Peter (hereinafter referred to as the “Applicants”) are nationals of Kenya. At the time of filing the Application, they were incarcerated in Karanga Main Prison, Moshi, Tanzania, awaiting retrials for armed robbery and murder. They allege violation of their rights during the proceedings before the national courts.
2. The Application is filed against the United Republic of Tanzania (hereinafter, “the Respondent State”), which became a 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, the Respondent State, on 29 March 2010, deposited the Declaration provided for under Article 34(6) of the Protocol (hereinafter referred to as, “the Declaration”), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations with observer status before the African Commission on Human and Peoples’ Rights. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission an instrument withdrawing its Declaration. The Court has held that this withdrawal has no bearing on pending cases or on new cases filed before the withdrawal came into effect, that is, one year after its deposit, which is on 22 November 2020.²

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges, from the record, that on 11 July 2007, the Applicants allegedly robbed a bank and killed a police constable who was guarding the bank in Mwanga, Kilimanjaro, Tanzania. The Applicants were arrested on 20 July

² *Andrew Ambrose Cheusi v. United Republic of Tanzania* (merits and reparations) (26 June 2020) 4 AfCLR 219, §§ 37-39.

2007 and charged for armed robbery and murder. The two crimes were prosecuted in two separate trials by the Respondent State.

4. On 13 June 2013, the Applicants were convicted by the trial court for armed robbery and sentenced to 30 years imprisonment.³ They appealed to the High Court. On 28 December 2015, the High Court dismissed the appeal.⁴ They appealed to the Court of Appeal, which on 29 August 2019 quashed their conviction, set aside the sentence and ordered a retrial before a fresh panel of magistrates upon finding some procedural irregularities prejudicing the Applicants rights.⁵ On 10 October 2019, the prosecution applied for review of the Court of Appeal's judgment.

5. In the trial for murder, on 11 June 2014, the High Court convicted the Applicants and sentenced them to death by hanging.⁶ The Applicants appealed to the Court of Appeal which on 29 February 2016 ordered a retrial upon finding procedural violations prejudicing the Applicants rights.⁷ On 30 October 2017, the retrial commenced at the High Court but the Respondent State's Prosecution filed an objection to the commencement of the retrial. On 3 November 2017, the High Court overruled the objection and ordered the case to commence. On the same day the prosecution appealed to the Court of Appeal against the order. At the time of filing the Application, the appeal regarding the commencement of the trial was pending and the Applicants were still incarcerated, as ordered by the Court of Appeal in the decision in appeal of the armed robbery case.⁸

³ *Criminal Case No. 12 of 2007*, Moshi Residents' Magistrate Court, (Judgment) (13 June 2013).

⁴ *Criminal Appeal No. 34 of 2013*, The High Court of Tanzania, at Moshi, (Judgment) (28 December 2015), page 18.

⁵ *Criminal Appeal No. 5 of 2016*, The Court of Appeal of Tanzania, at Arusha, (Judgment) (29 August 2019), pages 25-26.

⁶ *Criminal Case No. 6 of 2011*, The High Court of Tanzania, at Moshi, (Judgement) (11 June 2014), page 30 & page 32.

⁷ *Criminal Appeal No. 275 of 2015*, The Court of Appeal of Tanzania, at Arusha, (Judgment) (29 February 2016), pages 9-10.

⁸ *Criminal Appeal No. 5 of 2016*, The Court of Appeal of Tanzania, at Arusha, (Judgement) (29 August 2019), page 26.

B. Alleged violations

6. The Applicants allege the violation of the following:

- i. The right to non-discrimination protected under Article 2 of the Charter;
- ii. The right to equality before the law under Article 3 of the Charter, Article 10(3) of the African Charter on Democracy, Elections and Governance (hereinafter referred to as “ACDEG”) and Article 26 of the International Covenant on Civil and Political Rights (hereinafter referred to as the “ICCPR”);
- iii. The right to a fair trial guaranteed under Article 7 of the Charter;
- iv. The right to access information guaranteed under Article 9 of the Charter;
- v. The right to enjoy physical and mental health guaranteed under Article 16 of the Charter.

III. PRAYERS OF THE PARTIES

7. The Applicant prays the Court for:

- i. A declaration that the Applicants to be deemed to have exhausted local remedies;
- ii. A declaration that the Application has met the admissibility requirements in this application.
- iii. A declaration that the Respondent State violated the Applicant’s right to a fair trial;
- iv. A declaration that the Applicants are illegally incarcerated in the Respondent State’s prison and order for their immediate release;
- v. A declaration that the Respondent States is causing an inordinate delay in the cases facing the applicants;
- vi. An order for reparations.

8. On reparations, the Applicant prays the Court to grant the following orders:

- i. The immediate restoration of the Applicants liberty by release from prison;
- ii. Payment of reparations in the amount of USD 34,308 per Applicant on account of moral damage suffered;
- iii. Payment of reparations in an amount the Court considers reasonable to the Applicant on account of material prejudice suffered;
- iv. Payment of reparations in the amount of USD 20,000 per applicant on account of legal and related expenses.

9. The Respondent State prays the Court to grant the following orders:

- i. That the Applicant has not met the admissibility conditions under Article 56(5) and 56(7) of the Charter;
- ii. That the Application be declared inadmissible for contravention with Article 56(5) of the Charter and article 6(2) of the Protocol;
- iii. That the Respondent State has not violated the right to fair hearing under the Charter and the ICCPR;
- iv. That the Respondent State has not violated rights of the Applicants for Reparations to arise;
- v. That the Application and Reparations are devoid of merits;
- vi. That the costs be borne by the Applicant.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. The Application was filed on 6 February 2020.
11. On 29 June 2020, the Court decided, *suo motu*, to grant legal assistance to the Applicants under its pro bono legal aid scheme. Resultantly, counsel Donald Omondi DEYA, Pan African Lawyers Union (PALU), was appointed to represent the Applicants.
12. On 20 November 2020, the Applicants through their counsel filed an amended pleadings. It was served on the Respondent State on 24 December 2020.

13. The Parties filed their other pleadings within the time stipulated by the Court.
14. On 31 March 2022, in conformity with Rule 42(2)(b) of the Rules, the Court forwarded the Application filed by the Applicants, being Kenyan citizens, to the Republic of Kenya, advising the latter that should it wish to intervene in the matter, it should inform the Registrar within 30 days of receipt of this letter. To date, the Court has not received any communication from the Republic of Kenya with regard to this Application.
15. On 9 May 2024, the Court, on the basis of Rule 55(1) of the Rules, requested both Parties to file information concerning the status of the two retrials ordered by the Respondent State's Court of Appeal with respect to the Applicants' murder case and their armed robbery case.
16. On 10 June 2024, the Counsel for the Applicants informed the Court that the Applicants continued to pursue the case that was ongoing at the domestic level. The Counsel subsequently submitted that the Court of Appel of the Respondent State, in a decision of 1 October 2021, in an application for review, nullified the proceedings and judgment, thereby quashing the conviction and overturning the sentences imposed on the Applicants. The Counsel further submitted that the Applicants have been released from custody and wanted time to settle down before strategizing on how to proceed with the pending Application before this Court. The Counsel submitted that he would consult his clients and inform the Court on how they would proceed.
17. On 27 August 2024, the Counsel for the Applicants informed the Court that since their last communication on 10 June 2024, they had not been able to contact the Applicants, despite having undertaken several steps to engage with them, including reaching out to their families, the Kilimanjaro Regional Crime Officer where the Applicants were initially arrested and detained, and the Counsel that had represented the Applicants at the domestic level. Counsel submitted that notwithstanding these challenges, he was committed to identifying alternative means of communication with the

Applicants and requested the Court for additional time to continue his efforts to reach the Applicants and obtain further instructions regarding the case. Counsel also invited any further guidance or instructions from the Court on how to proceed.

18. On 7 October 2024, the Registry sent a notice to both Parties in which it noted that while it had received information about the Applicants' murder case, however, no information was provided by the Applicants concerning the status of the retrial in the armed robbery case. The Registry also took note that the Respondent State had not filed any information, as requested by the Court on 9 May 2024. The Registry further took notice of the Counsel's letter of 27 August 2024, in which the Applicants requested the Court for additional time to continue their efforts to reach the Applicants and to obtain further instructions regarding their case.
19. In the same notice, the Registry informed the Parties of the Court's decision to grant both the Respondent State and the Applicants a further extension of time to file information concerning the status of the retrials ordered with respect to the Applicants' murder case and their armed robbery case, within 30 days of receipt of the Notice. The Parties were also informed that should they not file the information requested within the time stipulated, the Court may proceed to apply Rule 65 of the Rules of Court, regarding "Strike Out and Restoration of an Application".
20. To date, no further communication was received from the Parties regarding this matter.

V. ON THE STRIKING OUT OF THE APPLICATION

21. The Court notes Rule 65(1) of the Rules which provides that:
 1. The Court may at any stage of the proceedings decide to strike out an Application from its cause list where:

- a. An Applicant notifies the Court of his/her intention not to proceed with the case;
 - b. An Applicant fails to pursue his case within the time limit provided by the Court;
 - c. It, for any other reason, concludes that it is no longer justified to continue with the examination of the Application.
22. The Court reiterates that parties to an application should pursue their case with diligence.⁹ Where they fail or implicitly or expressly indicate their lack of interest to do so, Rule 65 of the Rules empowers the Court to remove the application from its cause list. The Court may also strike out an application if in the circumstances, it is no longer justified to continue with the determination of the matter.
23. The rationale behind Rule 65 of the Rules is to encourage parties to demonstrate some level of diligence in pursuing their case or else their application could be struck out from the Court's cause list.¹⁰
24. Subject to the circumstances of each case, the Court retains the discretion to decide on whether a particular application should be struck out or not.
25. In the instant case, the Court notes that despite the various extensions of time granted to the Parties to file information concerning the status of the retrials ordered with respect to the Applicants' murder case and their armed robbery case, the Parties have failed to do so. In this regard, the Court notes, from the record, that there is proof of delivery of the notices sent to both Parties.

⁹ *Abdallah Ally Kulukuni v. the United Republic of Tanzania* (strike out) (25 September 2020) 4 AfCHPR 556 § 18; *Magweiga Mahiri v. United Republic of Tanzania*, ACtHPR, Application No. 029/2017 Order (Strike Out) of 24 March 2022, § 21; *Henry Massanja v. United Republic of Tanzania*, ACtHPR, Application No. 002/2018 Order (Strike Out) of 24 March 2022, § 13; *Ngasa Nhabi v. United Republic of Tanzania*, ACtHPR, Application No. 004/2018 Order (Strike Out) of 23 June 2022, § 13; *Vuyo Jack v. United Republic of Tanzania*, ACtHPR, Application No. 001/2019 Order (Strike Out) of 9 October 2022, § 26.

¹⁰ *Mahiri v. Tanzania*, *ibid*, § 22; *Massanja v. Tanzania*, *ibid*, § 14; *Nhabi v. Tanzania*, *ibid*, § 14; *Vuyo Jack v. Tanzania*, *ibid*, § 27.

26. The Court underscores that, regardless of their purported release or, possible change of address, it behoves the Applicants to give updates or notify the Court on their prison status or current whereabouts.¹¹
27. In view of the circumstances of this case, the Court thus finds that it is no longer justified to continue with the examination of the Application and therefore, decides that it shall be struck out from its Cause List.
28. The Court reiterates that the striking out of the Application is without prejudice to the Applicant's right to file for restoration of this Application in accordance with Rule 65(3) of the Rules.

VI. OPERATIVE PART

29. For these reasons:

THE COURT,

Unanimously,

Strikes out Application No. 007/2020 *Samwel Gitau Saitoti & Another v. United Republic of Tanzania* from its Cause List.

Signed:

Blaise TCHIKAYA, President; and



Grace W. KAKAI, Deputy Registrar.



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



¹¹ *Mahiri v. Tanzania, Ibid, § 31.*