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

ALLY RAJABU & OTHERS

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION No 007/2015

ORDER FOR PROVISIONAL MEASURES

The Court composed of: Elsie N. THOMPSON, Vice President, Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORÉ, El Hadji GUISSÉ, Ben Kioko, Rafâa Ben-ACHOUR, Solomy Balungi BOSSA, Angelo Vasco MATUSSE – 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 8 (2) of the Rules of Court ("hereinafter referred to as the Rules"), Justice Augustino S. L. RAMADHANI, President of the Court and a national of Tanzania, did not hear the Application."

In the matter of:

ALLY RAJABU
ANGAJA KAZENI
GEOFREY STANLEY
EMMANUEL MICHAEL
JULIUS MICHAEL

V.

THE UNITED REPUBLIC OF TANZANIA

After deliberations,
Makes the following Order:

I. Subject of the Application

1. The Court received, on 26 March 2015, an application by Ally Rajabu, Angaja Kazeni *alias* Oria, Geofrey Stanley *alias* Babu, Emmanuel Michael *alias* Atuu and Julius Michael, citizens of Tanzania, (hereinafter referred to as 'the

Applicants'), instituting proceedings against the United Republic of Tanzania (hereinafter referred to as 'the Respondent'), for alleged violations of human rights.

2. The Applicants, who are at the Arusha Central Prison, were sentenced to death by the High Court of Tanzania at Moshi on 25 November, 2011, for murder. That death sentence was confirmed by the Court of Appeal, which is the highest Court in Tanzania on 25 March, 2013.

3. The Applicants allege that:

   i. The decision against them was based on manifest errors on the record, to the extent that the evidence regarding their identification at the scene of the crime was not satisfactorily established due to the discrepancies among the prosecution witnesses.

   ii. During their trial, there was non-compliance with some of the procedures, such as the procedure on Preliminary hearing as provided under Section 192(5) of the Criminal Procedure Act.

   iii. The Prosecution failed to call important witnesses.

II. Procedure before the Court

4. The application dated 10 December, 2014, was received at the Registry of the Court on 26 March, 2015.

5. In accordance with Rule 35(2) and 35(4) of the Rules of the Court, the Registry forwarded the Application to the Respondent on 25 September 2015; and invited the latter to respond to the Application within sixty (60) days and to indicate within thirty (30) days of receipt of the Application, the names and addresses of its representatives.

6. By letter dated 6 November 2015, the Respondent submitted the list of the names and addresses of its representatives.

7. By letter dated 3 February 2016, the Registry reminded the Respondent to respond to the Application in accordance with Rule 37 of the Rules of the Court.

III. Jurisdiction

8. 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.

9. 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]

10. 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 of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned'.

11. The Respondent ratified the African Charter on Human and Peoples' Rights 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 Organizations, within the meaning of Article 34(6) of the Protocol read together with Article 5(3) of the Protocol.

12. The alleged violations the Applicants is complaining about are guaranteed under the scope of Article 7 of the Charter and Article 14 of the International Covenant on Civil and Political Rights ("hereinafter referred to as ICCPR"), and the Court therefore has *prima facie* jurisdiction *ratione materiae* over the application. The Respondent acceded to the International Covenant on Civil and Political Rights (ICCPR) on 11 June 1976 and deposited its instrument of accession on the same date.

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[1] See Application 002/2013 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated15 March 2013) and Application 006/2012 African Commission on Human and Peoples' Rights v Kenya (Order for Provisional Measures dated15 March 2013); Application 004/2011 African Commission on Human and Peoples' Rights v Libya (Order for Provisional Measures dated 25 March 2011).

13. 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 sought

14. In their Application, the Applicants did not request the Court to order provisional measures;

15. 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.

16. 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;

17. 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;

18. Given the particular circumstances of the case, where there is a risk of the execution of the death sentence, which may jeopardise the enjoyment of the rights guaranteed under Articles 7 of the Charter and 14 of the ICCPR, the Court has decided to invoke its powers under Article 27(2) aforesaid;

19. 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 Applicants as protected by Article 7 of the Charter and 14 of the ICCPR, if the death sentence were to be carried out.

20. Consequently, the Court concludes 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 ante,* pending the determination of the main application.

21. For the avoidance of doubt, this Order shall not in any way prejudice any final findings the Court shall make regarding its jurisdiction, the admissibility and the merits of the application.

For these reasons,

22. The Court, unanimously, orders the Respondent:

a) To refrain from executing the death penalty against the Applicants pending the determination of the main application

b) To report to the Court within thirty (30) days from the date of receipt of this Order, on the measures taken to implement the Order.

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

Signed:

Elsie N. THOMPSON, Vice President

Gérard NIYUNGEKO, Judge

Fatsah OUGUERGOUZ, Judge

Duncan TAMBALA, Judge

Sylvain ORÉ, Judge

El Hadji GUISSÉ, Judge

Ben KIOKO, Judge

Rafâa Ben-ACHOUR, Judge

Solomy Balungi BOSSA, Judge

Angelo Vasco MATUSE, Judge; and

Robert ENO, Registrar.