

AFRICAN UNION
الاتحاد الأفريقي



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

IN THE MATTER OF

DEOGRATIUS NICHOLAUS JESHI

V.

THE UNITED REPUBLIC OF TANZANIA

APPLICATION NO.017/2016

ORDER FOR PROVISIONAL MEASURES



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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 B. BOSSA, Angelo V. 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:

DEOGRATIUS NICHOLAUS JESHI

V.

THE UNITED REPUBLIC OF TANZANIA

After having deliberated,

Makes the following Order,

I. Subject of the Application

1. The Court received, on 22 March 2016, an Application by Deogratius Nicholas Jeshi (hereinafter referred to as "the Applicant"), instituting proceedings against the United Republic of Tanzania (hereinafter

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referred to as “the Respondent”), for alleged violations of human rights.

2. The Applicant, who is currently detained at Butimba Central Prison, was sentenced to death by the High Court of Tanzania at Bukoba on 15 July 2010. That death sentence was confirmed by the Court of Appeal, which is the highest Court in Tanzania, on 7 March 2013. The Applicant then made an application to the Court of Appeal for review of its judgment in application No. 6 of 2013.
3. The Applicant alleges, *inter alia*, that:
 - (a) the Court of Appeal misdirected itself on points of law and occasioned a miscarriage of justice in its judgment by failing to consider that his conviction by the High Court was based on extra-judicial statements obtained from himself and his co-accused;
 - (b) the Court of Appeal misdirected itself by considering that the allegedly stolen articles admitted at trial as exhibits were relevant to proving the alleged murder;
 - (c) the Court of Appeal caused him prejudice by failing to list his application for review to be heard, although it was filed in 2013;
 - (d) the High Court misdirected itself on points of law in its ruling to admit an exhibit because it overlooked the contradictions in the

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evidence of prosecution witnesses during the trial within a trial conducted regarding admission of the exhibit;

- (e) the High Court erred by relying on the exhibit to find that he fully participated in the murder as the exhibit only proved theft; and
- (f) both the High Court and the Court of Appeal unfairly convicted him on the basis of prosecution evidence that was not credible.

II. Procedure before the Court

- 4. The Application was received at the Registry of the Court on 22 March 2016.
- 5. Pursuant to Rule 36 of the Rules of Court, on 3 May 2016, the Registry served the Application on the Respondent.

III. Jurisdiction

- 6. 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.

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7. 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
8. 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 and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned”.
9. The Respondent ratified the Charter 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 Organisations, within the meaning of Article 34(6) of the Protocol, read together with Article 5(3) of the Protocol.
10. The alleged violations the Applicant is complaining about are guaranteed under Article 3(1) and (2) and Article 7(1)(c) and (d) of the Charter and the Court therefore has jurisdiction *ratione materiae* over the Application.

¹ See Application 002/2013 African Commission on Human and Peoples’ Rights v Libya (Order for Provisional Measures dated 15 March 2013) and Application 006/2012 African Commission on Human and Peoples’ Rights v Kenya (Order for Provisional Measures dated 15 March 2013); Application 004/2011 African Commission on Human and Peoples’ Rights v Libya (Order for Provisional Measures dated 25 March 2011).

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11. 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

12. In his Application, the Applicant did not request the Court to order provisional measures.

13. 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”.

14. 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.

15. 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.

16. Given the particular circumstances of the case, where the risk of execution of the death penalty will jeopardise the enjoyment of the rights guaranteed under Articles 3(1) and 2 and 7(1) (c) and (d) of the

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Charter, the Court has decided to invoke its powers under Article 27(2) of the Protocol.

17. 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 Applicant as protected by Articles 3(1) and (2) and 7(1) (c) and (d) of the Charter, if the death sentence were to be carried out.
18. Consequently, the Court holds 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*, pending the determination of the main Application.
19. For the avoidance of doubt, this Order shall not in any way prejudice any findings the Court shall make regarding its jurisdiction, the admissibility and the merits of the Application.

For these reasons,

20. The Court, unanimously, orders the Respondent to:
 - a) refrain from executing the death penalty against the Applicant pending the determination of the Application.
 - b) report to the Court within sixty (60) days from the date of receipt of this Order, on the measures taken to implement the Order.

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Done at Arusha, this 3rd day of June in the year 2016, in English, French, Portuguese and Arabic, 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 B. BOSSA, Judge 

Angelo V. MATUSSE, Judge; and 

Robert ENO, Registrar. 

